

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

- - -

TERESA HIPPLE,	:	CIVIL NO. 12-01256
formerly known as	:	
TERESA CONCEPCION,	:	
	:	
	:	
Plaintiff,	:	
	:	
	:	
	:	
v	:	
	:	
	:	
	:	
SCIX, LLC, et al,	:	
	:	Philadelphia, Pennsylvania
	:	July 30, 2015
Defendants.	:	8:59 a.m.

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TRANSCRIPT OF TRIAL - DAY FOUR  
BEFORE THE HONORABLE THOMAS J. RUETER  
UNITED STATES MAGISTRATE JUDGE

- - -

APPEARANCES:

For the Plaintiff: GERALD S. BERKOWITZ, ESQUIRE  
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For the Defendant CLEMENT HIPPLE  
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et al: Philadelphia, PA 19114  
Pro Se

Audio Operator: Carl Hauger

Transcribed by: Donna M. Anders

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1 (The following was heard in open court at 8:59  
2 a.m.)

3 MR. BERKOWITZ: Good morning, Your Honor.

4 MR. HIPPLE: Good morning, Your Honor.

5 THE COURT: Please be seated.

6 MR. BERKOWITZ: May I take off my jacket, Your  
7 Honor?

8 THE COURT: Oh, yes, please.

9 MR. BERKOWITZ: Thank you.

10 THE COURT: It's never gotten better in here  
11 unfortunately. Okay.

12 MR. BERKOWITZ: Your Honor, could I address a  
13 couple of housekeeping issues --

14 THE COURT: Sure.

15 MR. BERKOWITZ: -- from the exhibits that we  
16 discussed yesterday --

17 THE COURT: Yes. Yes.

18 MR. BERKOWITZ: -- and a couple of things with  
19 regard to the testimony of Mr. Shavel that -- that  
20 didn't come in.

21 THE COURT: Okay.

22 MR. BERKOWITZ: The first on Mr. Shavel, there  
23 were a couple of issues that would have come up just to  
24 identify Rules of Civil Procedure that were implicated,  
25 and I would have brought that out on his testimony. And

1 if I could just cite to the Court a couple of rules.

2 THE COURT: Yes. Sure. I'll tell you what.  
3 Why don't -- why don't you do this? Well, you could do  
4 it now if you want, but --

5 MR. BERKOWITZ: It's very simple, Your Honor.

6 THE COURT: -- but I was going to say if you  
7 want to submit copies of that to me at a later time or  
8 just cite them -- that's fine, go ahead.

9 MR. BERKOWITZ: Okay. One was the JCC  
10 notes --

11 THE COURT: Right.

12 MR. BERKOWITZ: -- that they contend were  
13 judgments, and Pennsylvania Rule of Civil Procedure  
14 2951(c) is the rule that was effective in 2003.

15 THE COURT: Okay.

16 MR. BERKOWITZ: And those rules were changed  
17 in 2008. The numbering was changed. The new rule is  
18 2952(a)(6). Again, they both require when there's a  
19 default required under the instrument that a complaint  
20 in confession of judgment be filed to enter a judgment,  
21 and the docket will reflect --

22 THE COURT: Okay.

23 MR. BERKOWITZ: -- the rest of it.

24 The other was with regard to the Complete  
25 Group judgment amount where a judgment was entered, you

1 recall, for that \$197,000, very specific number. And  
2 the Rule that requires a hearing before a judgment in  
3 the amount of money can be answered, without a sum  
4 certain demanded in the complaint is Rule 1037(b)(1).  
5 And you'll see in the complaint they demanded -- there's  
6 no demand for a sum certain nor is there any way to  
7 calculate it based on the complaint.

8 THE COURT: Is this something Judge Baldi may  
9 -- should have been maybe aware of? Not to criticize  
10 Judge Baldi, but --

11 MR. BERKOWITZ: No, no, no, no, no. This --  
12 this happened after Judge Baldi was no longer involved.

13 THE COURT: Oh.

14 MR. BERKOWITZ: This happened during --

15 THE COURT: Who entered the judgment?

16 MR. BERKOWITZ: -- this case where that  
17 judgment was entered.

18 THE COURT: Oh, it was a different Judge who  
19 entered it.

20 MR. BERKOWITZ: Yes, there's no Judge on it.  
21 When --

22 THE COURT: Oh, that's right. It was only --  
23 it was suspended until this --

24 MR. BERKOWITZ: -- when there's a -- well,  
25 when there's a default, there's no Judge. It's all done

1 through -- you file papers with the prothonotary.

2 THE COURT: Okay. Right.

3 MR. BERKOWITZ: And --

4 THE COURT: Well, unlike a Federal procedure,  
5 I mean, there's an entry of default, but then there's a  
6 hearing for the amount.

7 MR. BERKOWITZ: Correct.

8 THE COURT: Right.

9 MR. BERKOWITZ: And there was none because of  
10 the way the filing is done in Bucks County.

11 THE COURT: Okay.

12 MR. BERKOWITZ: It's just a paper the attorney  
13 filed and it's recorded.

14 THE COURT: Different procedure, okay.

15 MR. BERKOWITZ: Correct.

16 THE COURT: All right.

17 MR. BERKOWITZ: And I just wanted to point  
18 that out.

19 THE COURT: All right.

20 MR. BERKOWITZ: A couple of things with  
21 respect to the exhibits, and I just wanted to make sure.  
22 We used -- and Mr. Geisser used all the Wachovia checks,  
23 and I just wanted to make sure that in terms of the  
24 evidence that was admitted that we didn't  
25 unintentionally exclude any of the Wachovia Bank checks.

1 And to the extent we did, I just want to make sure that  
2 the Court admits all of the Wachovia checks. There were  
3 -- I've seen --

4 THE COURT: Have they been identified?

5 MR. BERKOWITZ: Yes. They were identified.

6 THE COURT: As an exhibit?

7 MR. BERKOWITZ: Yes. As a matter of fact --

8 THE COURT: But I did admit them, didn't I?

9 MR. BERKOWITZ: Well, here's the one I'm  
10 concerned with, Exhibit 125, Wachovia Bank checks for  
11 business payments.

12 THE COURT: Oh, that's right. You withdrew  
13 that.

14 MR. BERKOWITZ: Yes, I wasn't sure if that  
15 was --

16 THE COURT: All right. So now you want that  
17 to be admitted.

18 MR. BERKOWITZ: I would -- I would like that  
19 to be included.

20 THE COURT: 125. Any objection, Mr. Hipple,  
21 to 125?

22 MR. HIPPLE: I'll have to look at that, Your  
23 Honor.

24 THE COURT: Sure.

25 MR. HIPPLE: Give me a minute.

1 MR. BERKOWITZ: Again, and those were all used  
2 by Mr. Geisser.

3 MR. HIPPLE: Well, I don't have 125. I  
4 thought this was out.

5 THE COURT: It was in the books. Yes, but  
6 he --

7 MR. BERKOWITZ: It's right over there, Mr.  
8 Hipple, or it's in your 125.

9 THE COURT: Why don't you -- do you mind  
10 getting them and showing them to Mr. Hipple, Mr.  
11 Berkowitz?

12 MR. BERKOWITZ: Sure.

13 THE COURT: Thank you.

14 MR. BERKOWITZ: These are all the business  
15 expense checks from Wachovia.

16 MR. HIPPLE: You originally took these all  
17 out.

18 THE COURT: Right. But Mr. Geisser used some  
19 of those checks in the preparation of his report.  
20 That's what Mr. Berkowitz is telling us.

21 MR. HIPPLE: No objection, Your Honor.

22 THE COURT: All right. So they'll be  
23 admitted. That would be Plaintiff's Exhibit 125.

24 (Plaintiff's Exhibit Number 125, Wachovia Bank  
25 checks, business expenses, is admitted into evidence.)



1 MR. BERKOWITZ: Your Honor, Exhibit 42, the  
2 Merchant Card processing agreement, my Exhibit 42. It  
3 was used as an exhibit when Mr. Hipple and --

4 MR. HIPPLE: It's not in my book.

5 MR. BERKOWITZ: -- it's also Defendants'  
6 Exhibit --

7 THE COURT: Right.

8 MR. HIPPLE: 27.

9 THE COURT: We went over this -- we went over  
10 this yesterday.

11 MR. BERKOWITZ: Okay. Was that admitted or  
12 not?

13 THE COURT: No, not admitted.

14 MR. HIPPLE: Not admitted.

15 MR. BERKOWITZ: Okay. So that --

16 THE COURT: Yes. Yes, I did not admit that.

17 MR. BERKOWITZ: No, it was 36 that we didn't  
18 admit. That was the one that was --

19 THE COURT: That's not admitted also.

20 MR. BERKOWITZ: Right. But 42 was the -- was  
21 Defendants' Exhibit 27.

22 THE COURT: It's not admitted because you  
23 didn't lay the proper foundation in my view --

24 MR. BERKOWITZ: In terms of the  
25 authentication, the signatures?

1 THE COURT: Yes.

2 MR. BERKOWITZ: Okay. Let's see. I think I  
3 just have -- also I believe and I don't think this is a  
4 problem. It was --

5 THE COURT: In addition, it's a hearsay  
6 document. You didn't -- you didn't establish it as a  
7 business record, but go ahead.

8 MR. BERKOWITZ: Okay. All of the Steel Seal  
9 Pro checks were also used by Mr. Geisser, and I think  
10 they're all admitted. I don't have any that aren't  
11 admitted on my records. I just want to make sure that  
12 we're clear on that.

13 MR. HIPPLE: What number?

14 MR. BERKOWITZ: They are Exhibit 39. That was  
15 admitted. I just want to make sure we didn't --

16 THE COURT: 39 was admitted.

17 MR. BERKOWITZ: Yes. Those are the Steel Seal  
18 Pro bank records. I just want to make sure --

19 THE COURT: All right.

20 MR. BERKOWITZ: -- they're all included.

21 THE COURT: Right.

22 MR. BERKOWITZ: And that's all I have, Your  
23 Honor.

24 THE COURT: Okay. All right. Mr. Hipple --

25 MR. HIPPLE: Yes, Your Honor.

1 THE COURT: -- yes. Well, we're ready to  
2 proceed. Mr. Hipple, I also want to state on the record  
3 I'm not rushing you in any way. I mean --

4 MR. HIPPLE: I always feel rushed, Your Honor.

5 THE COURT: No. Well --

6 MR. HIPPLE: I don't know why. Okay.

7 THE COURT: -- yes, well, you're -- you know,  
8 if --

9 MR. HIPPLE: I'm at a fast-paced --

10 THE COURT: -- you were an attorney, you would  
11 be quicker, but that's okay. I'm trying to -- but, you  
12 know, we're -- I'd like to get this case tried --

13 MR. HIPPLE: We should be --

14 THE COURT: -- done this week and I hope we  
15 can, but I'm not rushing you and please take whatever  
16 opportunity you need to put on your case.

17 MR. HIPPLE: Okay.

18 THE COURT: Okay.

19 MR. HIPPLE: All right. Okay. I would like  
20 to call for my first witness Ira Krassan.

21 THE COURT: Pardon me?

22 MR. HIPPLE: I would like to call Ira Krassan  
23 as my first --

24 THE COURT: Yes. Sure. Is Mr. Krassan here?  
25 Yes. Sir, would you come forward? Thank you. Good

1 morning, sir.

2 THE WITNESS: Good morning.

3 THE COURT: Sit right over here, please.

4 COURTROOM DEPUTY: Please raise your right  
5 hand.

6 IRA KRASSAN, Defendants' Witness, Sworn.

7 COURTROOM DEPUTY: Please state and spell your  
8 last name for the record.

9 THE WITNESS: Ira Krassan, K-R-A-S-S-A-N.

10 COURTROOM DEPUTY: Thank you.

11 DIRECT EXAMINATION

12 BY MR. HIPPLE:

13 Q Good morning, Ira.

14 A Good morning.

15 Q Okay. Where -- where is your residence?

16 A I reside in Cherry Hill, New Jersey.

17 Q Okay. And your occupation?

18 A CPA.

19 Q How long have you been a CPA?

20 A Since 1995.

21 Q And you have a license as a CPA?

22 A Yes, sir.

23 Q After you obtained your license, did you go to work  
24 as a CPA?

25 A Yes, I did.

1 Q Okay. Where?

2 A In a practice in Cherry Hill, New Jersey.

3 Q Okay. Did you ever have your own firm?

4 A Yes, I did.

5 Q And the name of that firm was?

6 A Ira Krassan and Associates.

7 Q Do you still have that firm?

8 A No.

9 Q Did you sell it?

10 A Yes, I did.

11 Q When?

12 A December 27th, 2012.

13 Q Do you continue to have any ownership interest?

14 A Yes.

15 Q How much?

16 A One percent.

17 Q Do you still perform any accounting work?

18 A Yes, I do.

19 Q What firm do you perform that work through?

20 A Krassan and Glauser, P.C.

21 Q Where are you currently employed?

22 A I have -- Hydraulics Products, Incorporated.

23 Q And what does that entity do?

24 A We sell hydraulic products to the agriculture

25 industry.

1 MR. BERKOWITZ: Your Honor, I don't mean to  
2 interrupt, but we agree Mr. Krassan is an accountant and  
3 he can testify. He's not here as an expert witness. So  
4 I -- I don't know that we need to go through his  
5 qualifications.

6 MR. HIPPLE: Okay. Fine.

7 THE COURT: That's fine. Do you want to move  
8 that microphone down a little bit? That's great.  
9 Thanks.

10 MR. HIPPLE: I'm not used to microphones.

11 BY MR. HIPPLE:

12 Q Okay. So I'm going to skip all that, okay?

13 Do you know Clement Hipple?

14 A Yes.

15 Q Did Clement Hipple become a client of yours?

16 A Yes.

17 Q At -- and at the time, was your firm Ira Krassan  
18 Associates?

19 A Yes.

20 Q Do you recall when Clement Hipple became a client of  
21 yours?

22 A I don't recall the exact year.

23 Q Approximately? Ten years, five years?

24 THE COURT: Do you want to suggest a date to  
25 him? You can suggest a date. Do you remember when it

1 was?

2 MR. HIPPLE: I don't know the date either,  
3 Your Honor.

4 THE WITNESS: I -- I would probably say in the  
5 early 2000s.

6 MR. HIPPLE: Okay. Thank you.

7 BY MR. HIPPLE:

8 Q What about any business he owns as far as any  
9 business -- all right. Okay, wait a minute.

10 Okay. What about any business he owns that  
11 you would have done work for him?

12 A Yes.

13 Q Are you familiar with a company called SCIX?

14 A Yes.

15 Q Did you ever -- did you ever perform any accounting  
16 service for SCIX?

17 A Yes, I did.

18 Q And when would that have been, upon forming of the  
19 business?

20 A Upon forming -- upon formation, yes.

21 Q Okay. So basically you performed the -- all of  
22 SCIX's work from when you became --

23 A Yes, I did.

24 Q Sorry about that. Now, is it fair to say that you  
25 were still performing accounting work for SCIX in the

1 summer of 2010?

2 A Yes.

3 Q And were you still providing accounting services to  
4 Brian Hipple through the summer of 2010?

5 A Yes.

6 Q And from 2006 through 2010, was it Ira Krassan and  
7 Associates who was performing the accounting services  
8 for Brian -- SCIX?

9 A Yes.

10 Q Did you prepare Brian Hipple's personal tax returns  
11 from 2006 through 2010?

12 A Yes.

13 Q For the tax returns you prepared for 2006 to 2010  
14 for Brian Hipple, was the income from SCIX reflected on  
15 a Schedule C?

16 A Yes, it was.

17 Q Does that reflect that SCIX was a single member LLC  
18 owned by Brian Hipple alone?

19 A Yes.

20 Q When you -- when would -- yes. When you would  
21 perform accounting work for SCIX, would you travel to  
22 SCIX's office?

23 A Yes.

24 Q And would you travel to Brian's home?

25 A Yes.



1 Q And approximately how many times between 2006 and  
2 2010 did you travel to Brian's home?

3 A At least four.

4 Q And when you were at Brian's home or the SCIX  
5 office, who did you observe operating SCIX?

6 A Brian Hipple.

7 Q Did you ever see Clement Hipple involved in the  
8 operation of SCIX?

9 A No.

10 Q To the best of your knowledge, who owned SCIX from  
11 2006 to 2010?

12 A Brian Hipple.

13 Q What about Clement?

14 A He was not an owner.

15 Q To the best of your knowledge, who operated SCIX  
16 from 2006 to 2010?

17 A Brian Hipple.

18 Q What about Clement?

19 A No.

20 Q How is it that you know Brian alone owned and  
21 operated SCIX from 2006 through the summer of 2010?

22 A All the conversations that I had regarding the  
23 preparation of the tax returns were with Brian Hipple  
24 and --

25 MR. BERKOWITZ: I'm sorry. I'm going to

1 interpose an objection. It's classic hearsay, Your  
2 Honor. He's talking about conversations with Brian  
3 Hipple to prove the truth of the matter asserted. We  
4 have issues of hearsay and the dead man's rule.

5 MR. HIPPLE: I can rephrase --

6 THE COURT: I'll overrule the objection. You  
7 may proceed.

8 MR. HIPPLE: Okay.

9 THE COURT: You can -- go ahead, would you  
10 finish your answer, sir.

11 THE WITNESS: I --

12 THE COURT: How do you know that Brian Hipple,  
13 was it, ran the business --

14 MR. HIPPLE: Yes, yeah.

15 THE COURT: -- operated the business?

16 MR. HIPPLE: Alone.

17 THE WITNESS: I worked with Brian directly. I  
18 received all the accounting data from Brian, the backups  
19 from Brian. Any questions I had regarding the  
20 preparation of the tax returns were with Brian and only  
21 Brian.

22 BY MR. HIPPLE:

23 Q And is it possible that Brian alone owned the  
24 operations of SCIX?

25 A Yes.

1 Q Did you ever see any board agents or board meetings  
2 for SCIX?

3 A No.

4 Q During the time that you were performing accounting  
5 service for SCIX, did SCIX owe any money to Clement  
6 Hipple?

7 A Yes.

8 Q Do you know what the purpose of those loans were?

9 A The initial start-up money, purchase the  
10 intellectual property, inventory, to start the website.

11 Q Okay. That would have been my next question, okay,  
12 and you already answered it.

13 Do you know when SCIX was first formed?

14 A I do not.

15 Q Okay. In performing accounting service for SCIX,  
16 did you have access to SCIX's books and records?

17 A Yes, I did.

18 Q Did -- did SCIX use QuickBooks?

19 A Yes.

20 Q And who kept the books for SCIX?

21 A Brian Hipple.

22 Q And in performing accounting services for SCIX,  
23 would you be provided access to QuickBooks?

24 A Yes.

25 Q And did you ever see any reference to any loans made

1 to Clement Hipple -- or made by Clement Hipple to SCIX  
2 in SCIX's QuickBooks?

3 A Yes.

4 Q What about the loans to Teresa, did you ever see  
5 those referenced in SCIX's QuickBooks?

6 A Yes.

7 Q And for accounting purposes, did you treat the loan  
8 for Clement the same as you did the loan for Teresa  
9 Hipple --

10 A Yes.

11 Q -- or Concepcion? Did you review any financial  
12 references to these loans for purposes of preparing  
13 Schedule C of Brian Hipple's personal tax returns after  
14 he became the sole member of SCIX?

15 A I don't quite understand the question.

16 Q Yeah, I figured it. I'm not -- I'm not reading it  
17 properly. All right. Give me another shot.

18 All right. Did you review any financial --  
19 financial references --

20 THE COURT: Any records?

21 MR. HIPPLE: Records. I guess reference is  
22 records.

23 BY MR. HIPPLE:

24 Q -- to those loans for purposes of preparing Schedule  
25 C to Brian Hipple's personal tax returns and after he

1 became the sole owner of SCIX?

2 A Yes.

3 Q Two more pages. And did you include interest on  
4 Schedule C of Brian's tax returns each year for loans  
5 made to SCIX by Clement Hipple?

6 A Yes.

7 Q And how did you determine the interest paid each  
8 year?

9 A We prepared an amortization schedule for each of the  
10 loans.

11 Q Okay. That was my next question. My next question:  
12 Did you prepare that amortization schedule?

13 A Yes, we did.

14 Q Okay. And who updated these schedules in your firm?

15 A My assistant accountant.

16 Q Okay. And who maintained the schedules?

17 A My firm.

18 Q All right. I'm going to show you a document. The  
19 document is D-9.

20 MR. BERKOWITZ: I'm sorry. Was that D-9, sir?

21 MR. HIPPLE: David-9.

22 MR. BERKOWITZ: Thank you.

23 BY MR. HIPPLE:

24 Q Do you recognize this document?

25 A I don't know if I recall seeing it or not.

1 Q Okay. Then we'll get away from that and close that.  
2 I wonder if I gave you the wrong document, because it  
3 says three pages.

4 A This is only a two-page licensing agreement.

5 Q Yeah. No, that's not the right document.

6 MR. HIPPLE: I'm sorry. Wrong document.

7 MR. BERKOWITZ: That's okay.

8 MR. HIPPLE: D-14.

9 MR. BERKOWITZ: D-14.

10 BY MR. HIPPLE:

11 Q Do you recognize this document?

12 A Yes, I do.

13 Q Can you tell the Court what it is?

14 A Aside from my subpoena, it is a copy of the  
15 amortization schedule that we prepared and maintained on  
16 behalf of Clement Hipple.

17 Q So this is your response to the subpoena?

18 A Yes.

19 Q And can you tell the Court what the last three pages  
20 of this document represent?

21 A The amortization schedule that my firm prepared and  
22 maintained on behalf of the loans from Clement Hipple.

23 Q Okay. And is this the running balance of the loan  
24 owed by SCIX to Clement Hipple?

25 A Yes.

1 Q Okay.

2 MR. HIPPLE: I can put that away. Hold on a  
3 moment.

4 (Pause in proceedings.)

5 BY MR. HIPPLE:

6 Q And is this amortization schedule that you testified  
7 above in response to my earlier questions?

8 A Yes.

9 Q And this amortization schedule was updated yearly,  
10 right?

11 A Yes.

12 Q And in the amortization schedule, that would include  
13 payments made on this loan?

14 A Yes.

15 Q And the payments that were made on this loan, where  
16 did you get that information from to include on this  
17 document?

18 A From the QuickBooks database.

19 Q Can you -- can you please tell the Court what's the  
20 balance of the loan owed by -- owned by SCIX to Clement  
21 -- owed by SCIX to Clement Hipple as of September 30th,  
22 2010?

23 A \$210,187.36.

24 THE COURT: As of what date? I'm sorry.

25 THE WITNESS: September of 2010.

1 THE COURT: Thank you.

2 BY MR. HIPPLE:

3 Q Did you ever speak with Clement Hipple about this  
4 loan?

5 A Yes.

6 Q Okay. Would I -- no, I can't say me -- would he  
7 reach out to you every now and then to find out what the  
8 balance was?

9 A Yes, he did.

10 Q And would you tell him the balance?

11 A Yes.

12 Q And did you have permission from SCIX to do that?

13 A Yes.

14 Q And what, if any, did you rely upon to answer his --  
15 these questions about the balance of the loan from SCIX?

16 A The company's records and my amortization schedule.

17 MR. HIPPLE: See, this is a little tricky,  
18 this next question. I have to rephrase it.

19 BY MR. HIPPLE:

20 Q Did you -- did you receive a subpoena upon Ira  
21 Krassan and Associates in this matter?

22 A Yes.

23 Q Okay. Do you recall that Mr. Berkowitz's office  
24 also served you with a subpoena in this matter?

25 A I believe so.



1 Q And in response to those subpoenas, did you perform  
2 a search for documents --

3 THE COURT: Related?

4 MR. HIPPLE: R-E -- R-E-S-P-O-N-S-I-V-E.

5 THE COURT: Responsive.

6 BY MR. HIPPLE:

7 Q -- responsive to that subpoena?

8 A Yes.

9 Q And did you search in all the places that you  
10 believe responsive documents could have been found --  
11 located?

12 A Yes.

13 Q And did you search on your computer for responsive  
14 documents?

15 A Yes.

16 Q And did you produce any -- any of the documents that  
17 were responsive to the subpoena served on you in this --

18 A Yes, we did.

19 Q Okay.

20 MR. HIPPLE: This is going pretty good. Okay.

21 (Pause in proceedings.)

22 MR. HIPPLE: No further questions, Your Honor.

23 THE COURT: Thank you. Mr. Berkowitz.

24 CROSS-EXAMINATION

25 BY MR. BERKOWITZ:

1 Q Good morning, Mr. Krassan.

2 A Good morning.

3 Q Mr. Krassan, if you look at Defendants' Exhibit 14,  
4 it looks like you responded by fax?

5 A Yes.

6 Q Okay. And you see at the top it's got one of eight  
7 pages?

8 A Yes.

9 Q Okay. If we could go to -- first, you see the  
10 subpoena page. I think it's three or four pages in.

11 A Yes.

12 Q Do you see that? That's the subpoena that was  
13 served on you?

14 A Yes.

15 Q Okay. And the next page is Exhibit A?

16 A Yes.

17 Q And it asked you to produce all the documents you  
18 had relating to SCIX, LLC, from January 1 through  
19 January 10?

20 A Yes.

21 Q Okay. And you produced all those documents?

22 A We produced everything we had.

23 Q Okay. And let's look at number two, "Any and all  
24 documents reflecting and/or evidence of any credit  
25 extended by Clement Hipple or any agent or affiliate or

1 a company owned by Clement Hipple to SCIX during the  
2 period of January 1, 1999, through January 1, 2010."

3 Did you review your records?

4 A Yes.

5 Q And did you produce any records?

6 A Everything we had.

7 Q Okay. So there's nothing that was subpoenaed that  
8 you didn't produce?

9 A Right.

10 Q Okay. And let's look at number three, if you can  
11 just read it?

12 A "Any and all documents reflecting any" --

13 Q You don't have to read it out loud.

14 A Oh, sorry.

15 Q I'm sorry.

16 A Yes, we -- we did.

17 Q Okay. So this reflects all of the loans of all of  
18 the companies that Clement Hipple owns -- this is all  
19 the debt owed --

20 A Yes.

21 Q -- to Clement Hipple and all his companies?

22 A Yes.

23 Q Okay. And there's no other records?

24 A Not that I'm aware of.

25 Q Okay. And number four, do you see that, "Any and

1 all documents" --

2 A Yes.

3 Q -- "relating to any payments" --

4 A Yes.

5 Q Okay. And, again, we have all of those?

6 A Yes.

7 Q Okay. Now, let's look at the next three pages.

8 Those are all the records you had?

9 A Yes.

10 Q Okay. Mr. Krassan, I'd like you to look at --

11 MR. BERKOWITZ: Plaintiff's Exhibit 6, Your  
12 Honor.

13 BY MR. BERKOWITZ:

14 Q Do you recognize that document?

15 A Yes.

16 Q Okay. And -- and if you look up in the left-hand  
17 corner, you see a number of entities raised or names?

18 A Yes.

19 Q Okay. And it says Teresa, Clem, JC, and this is  
20 Teresa?

21 A Yes.

22 Q Okay. So this was Teresa Hipple's loans --

23 A Yes.

24 Q -- to SCIX?

25 A I believe so.

1 Q Okay. Just asking. If you would turn, sir, to  
2 Exhibit 17, Plaintiff's Exhibit 17 in that document.

3 THE COURT: That -- it's -- are you in defense  
4 book, right?

5 THE WITNESS: Wrong book?

6 MR. BERKOWITZ: Oh, I'm sorry. It's the  
7 white --

8 THE COURT: Oh, you're in there. Okay.

9 MR. BERKOWITZ: -- yes, you're in the right  
10 book, you're in the right book.

11 THE COURT: Okay.

12 MR. BERKOWITZ: We have a lot of books here.

13 THE COURT: Right, I saw a black book there.

14 BY MR. BERKOWITZ:

15 Q Mr. Krassan, have you ever seen that document  
16 before?

17 A Not that I'm aware of.

18 Q Okay. And do you see, it's the assignment of Mr.  
19 Hipple's interest in SCIX to his son, Brian?

20 A Yes.

21 Q And this is the transaction that you're familiar  
22 with?

23 A Yes.

24 Q And did you know that Mr. Hipple retained all his  
25 voting rights in SCIX?

1 MR. HIPPLE: Objection, Your Honor.

2 THE COURT: Overruled.

3 THE WITNESS: No.

4 BY MR. BERKOWITZ:

5 Q Okay. Thank you. Are you -- you mentioned that you  
6 had a lot of familiarity with Brian?

7 A Yes.

8 Q And you would go into the office and do work for the  
9 business?

10 A Yes.

11 Q And are you familiar with how the business collected  
12 its money from its Internet sales?

13 A Yes.

14 Q And how was that?

15 A I believe it was all through electronic payments.

16 Q Okay. And do you know whether they had agreements  
17 with companies that process electronic transactions so  
18 that the credit card of a customer ends up in the bank  
19 account of SCIX?

20 A I never saw any of those documents, but being  
21 familiar with how these things happen, there would have  
22 to be agreements set up to be able to receive those  
23 moneys.

24 Q Okay. And that's a normal business record that  
25 somebody might have, an agreement with a --

1 MR. HIPPLE: Objection, Your Honor.

2 MR. BERKOWITZ: -- credit card processing  
3 company?

4 MR. HIPPLE: It has nothing --

5 THE COURT: I'll overrule the objection, but  
6 he's not the custodian of the records.

7 MR. BERKOWITZ: Yes. I --

8 THE WITNESS: Nor do I believe that that is a  
9 document that somebody would normally keep.

10 BY MR. BERKOWITZ:

11 Q Over the years did you have occasion to see Brian  
12 Hipple's signature?

13 A I would not be able to pick it out --

14 Q Okay.

15 A -- if you asked me to.

16 Q Okay. If you saw it, would you -- would you  
17 recognize it?

18 A No.

19 Q Okay. Now, I'd like you to look at -- it's D-14,  
20 but in the book, the white book that you have, it's  
21 Plaintiff's Exhibit 9. It's the calculation --

22 MR. HIPPLE: D-14?

23 MR. BERKOWITZ: Yes, D-14 which is also  
24 Plaintiff's Exhibit 9.

25 THE WITNESS: Yep.

1 BY MR. BERKOWITZ:

2 Q And do you see, if we look in the middle -- well,  
3 first at the top it says you calculated interest on this  
4 loan at eight percent, correct?

5 A Yes.

6 Q And could you tell me where did you get that eight  
7 percent interest?

8 A It was provided to me by the company.

9 Q Okay. So you never saw a promissory note or  
10 anything?

11 A Not that I recall.

12 Q Okay. And if you look at the calculation of  
13 interest in the center column, could you tell me is that  
14 compounded interest?

15 A Yes.

16 Q Okay. And do you know why you compounded the  
17 interest?

18 A On a monthly basis.

19 Q Yes, but do you know why it was compounded as  
20 opposed to being calculated as simple?

21 A I cannot answer that.

22 Q Okay. You know the difference between simple  
23 interest and compound?

24 A Yes, I do.

25 Q Okay. Now, if you look in the category, the



1 heading, principal?

2 A Yes.

3 Q And you see the first entry, \$130,000 --

4 A Yes.

5 Q -- right? And that is money that Clement Hipple  
6 paid in to the company?

7 A Yes.

8 Q Okay. And did you have an opportunity to verify  
9 bank statements and the like to show it was paid in?

10 A Yes.

11 Q Okay. And the next line shows repayments. That's  
12 what the negatives are?

13 A Yes.

14 Q Okay. Thank you.

15 MR. BERKOWITZ: No further questions, Your  
16 Honor.

17 THE COURT: Thank you. Anything else, Mr.  
18 Hipple?

19 MR. HIPPLE: Yes, Your Honor. I'm not certain  
20 but he didn't mention about Teresa's note, right,  
21 correct?

22 THE COURT: Why don't you come on up here.  
23 You can ask him questions.

24 MR. BERKOWITZ: Yes, he did, Your Honor. That  
25 was one of the documents we addressed.

1 MR. HIPPLE: This is Teresa's note. It's been  
2 re-done, okay? I remember seeing the original note from  
3 Mr. Beck's (ph) office, okay. And on the -- when she  
4 foreclosed in 2010, she received three payments of  
5 \$6,000 instead of the 3,000, and that has been adjusted  
6 out of the original note.

7 THE COURT: Why don't you ask him those  
8 questions.

9 MR. HIPPLE: Okay.

10 THE COURT: Do we -- do we have an exhibit  
11 number on that? I know he did show him that --

12 MR. BERKOWITZ: Which one, the --

13 THE COURT: -- Ms. Hipple's --

14 MR. HIPPLE: Note.

15 THE COURT: -- the amortization schedule. I  
16 think he did --

17 MR. BERKOWITZ: Their -- their calculation.

18 MR. HIPPLE: Your calculation.

19 MR. BERKOWITZ: My calculation?

20 MR. HIPPLE: The one in the book, whatever  
21 one's in the book.

22 MR. BERKOWITZ: Well, there's -- there's  
23 Plaintiff's Exhibit 6. Is that the one we're talking  
24 about?

25 THE COURT: Right, right, P-6, I believe.

1 MR. BERKOWITZ: Well, he -- Mr. Krassan looked  
2 at that.

3 THE COURT: Right. That one -- Mr. Krassan,  
4 this is something you prepared, right?

5 THE WITNESS: It looks like it is, yes.

6 THE COURT: Okay. So what -- you want to ask  
7 him about P-6, Mr. Hipple?

8 MR. HIPPLE: Yes.

9 THE COURT: You can approach and -- and talk  
10 to him.

11 REDIRECT EXAMINATION

12 BY MR. HIPPLE:

13 Q Well, first of all, this doesn't go -- let's see.  
14 What was -- was that the last payment in 2009? I  
15 thought the last payment was after that? Do you have a  
16 copy of the note with you?

17 A No.

18 Q No? But you have a copy in your office, correct?

19 A Yes.

20 MR. BERKOWITZ: Object, Your Honor. He  
21 testified he produced all the records that he had with  
22 him and now he's saying he's got a note that wasn't  
23 produced in response to the subpoena.

24 MR. HIPPLE: No. I'm saying this -- this is  
25 not the document I think he originally produced.

1 THE COURT: Well, okay. Now, you mentioned a  
2 note.

3 MR. HIPPLE: If you look at the top of the --

4 THE COURT: This is an amortization schedule,  
5 right?

6 MR. HIPPLE: Right. Yes, I'm saying -- Your  
7 Honor.

8 THE COURT: Okay. So are you asking him does  
9 he have another amortization schedule other than the one  
10 that's in P-6?

11 MR. HIPPLE: There's -- there's another loan,  
12 because if you look at the top of this note, it says --

13 THE COURT: Right. There's two loans, right.

14 MR. HIPPLE: -- it says, Teresa, Clem and  
15 JC --

16 THE COURT: Right.

17 MR. HIPPLE: -- correct?

18 THE COURT: Right.

19 MR. HIPPLE: Okay. Now, this isn't the  
20 individual note that I believe that was produced. Now,  
21 he produces another note -- let me see if I can find the  
22 other document --

23 THE COURT: Right. Do you know -- do you  
24 know, sir, is this one -- there were two -- there were  
25 two loans by Teresa Hipple. Are you aware of that? Or

1 does this reflect the consolidated -- the amount?

2 THE WITNESS: I don't recall.

3 THE COURT: Do you know what this reflects?

4 MR. BERKOWITZ: Well, are we talking about the  
5 promissory notes to Teresa Hipple?

6 MR. HIPPLE: P-133.

7 THE COURT: Right. There were two --

8 MR. BERKOWITZ: Are we talking about the notes  
9 to Teresa Hipple?

10 THE COURT: That's what I think he's talking  
11 about, yes.

12 MR. BERKOWITZ: Are those -- is that what  
13 you're referring to?

14 MR. HIPPLE: Let me get there, P-133.

15 MR. BERKOWITZ: P-133.

16 MR. HIPPLE: 132 it looks like now.

17 MR. BERKOWITZ: Oh, 132, Your Honor, is --  
18 this is the exhibit that --

19 THE COURT: Okay.

20 MR. BERKOWITZ: -- we used previously. Do you  
21 want me to --

22 THE COURT: Yes, why don't you put it up.  
23 Perhaps the witness -- it will help the witness.

24 MR. HIPPLE: Okay.

25 THE COURT: Go ahead, Mr. Hipple.

1 MR. HIPPLE: Well, I have it in the book also.  
2 Maybe in the book it would be easier for him to see.

3 THE COURT: All right.

4 BY MR. HIPPLE:

5 Q What I'm trying to explain is that -- okay, this is  
6 not your document, correct? You didn't do an  
7 amortization schedule all the way out to -- to there?

8 A No.

9 Q No. So, basically, this schedule -- this  
10 amortization schedule that he has on the board was not  
11 produced by Ira Krassan, okay? And I want to bring your  
12 attention to something but I'm not certain because I  
13 thought I had it this morning, but apparently I didn't  
14 have.

15 When the payments stopped from Brian Hipple to  
16 Teresa, her last three payments she received were in the  
17 amount of \$6,000, okay. In other words, her normal  
18 payment would have been 3,000 but he gave her six, six  
19 and six. Now, this has gotten changed, and I can't  
20 question the attorney about that, so -- and --

21 THE COURT: Where does it say the last three  
22 payments were six? It just seems it's consistent.

23 MR. HIPPLE: It doesn't show it.

24 THE COURT: Oh.

25 MR. HIPPLE: That's what I'm saying, Your

1 Honor.

2 THE COURT: Oh, okay.

3 MR. HIPPLE: It's been -- it's been changed or  
4 however -- whatever word you want to use, but this is  
5 not original -- this is not the notes from Mr. Krassan.  
6 He identifies that this is not his --

7 THE COURT: Okay.

8 THE WITNESS: The amortization schedule in P-6  
9 references the last few payments as 6,000.

10 MR. HIPPLE: Oh, it is in there? Okay. All  
11 right. That's what I'm trying -- the point I'm trying  
12 to get at. I missed that. I know I just found that  
13 document.

14 See, Your Honor, what I'm -- what I'm trying  
15 to point out is someone, whoever prepared the note in  
16 the plaintiff's book, okay --

17 THE COURT: The 132?

18 MR. HIPPLE: Right -- took it and doctored it  
19 -- I don't know if I'm using the correct word -- and  
20 changed it.

21 THE COURT: Okay.

22 BY MR. HIPPLE:

23 Q Okay? So I'm showing that this document is not the  
24 correct document.

25 A This document -- our document ends in 2009. This

1 document continues well beyond that.

2 Q Okay. Let's go back to 2009 where our document  
3 ends, okay?

4 A Which is right there -- right there with that --  
5 with that principal payment of \$6,040.68. That's where  
6 our documents ends. Up to that point in time it appears  
7 to be -- the balance of the loan does not agree but the  
8 principal payments seem to match.

9 Q Okay. But the balance don't match your schedule,  
10 right?

11 A Correct. Because the starting balance of the loan  
12 does not match. There was additional loans to the  
13 company. Their -- their note begins in August I believe  
14 of 2002, referencing the \$350,000 and ours includes some  
15 additional loans that theirs, that this schedule does  
16 not.

17 Q So -- okay. So basically the schedules don't match  
18 the original schedule?

19 A The schedules do not match the schedule which  
20 appears to be the schedule prepared by my office.

21 Q Okay. Thank you.

22 MR. BERKOWITZ: I'm sorry. Is that --

23 MR. HIPPLE: Oh, no thanks.

24 MR. BERKOWITZ: Okay. I'm sorry.

25 BY MR. HIPPLE:



1 Q So basically which schedule -- in my opinion, I  
2 believe we should go by the schedule of the accountant,  
3 his schedule.

4 THE COURT: Well, 132's admitted into evidence  
5 and so is -- well, I don't know if we moved D-6 in, but  
6 you'll move it into evidence, and that's for me --

7 MR. HIPPLE: That's --

8 THE COURT: -- the fact finder, to consider.

9 MR. BERKOWITZ: I believe D-6 is also in as  
10 one of plaintiff's exhibits.

11 THE COURT: It's admitted. So they're both  
12 into evidence. We can have argument at a later time of  
13 which one is more accurate based on the testimony you've  
14 heard -- I've heard, so we don't need to decide that  
15 now.

16 MR. HIPPLE: Okay. All right. Okay. No  
17 further questions, Your Honor.

18 THE COURT: Okay. Anything else, Mr.  
19 Berkowitz, of the witness?

20 MR. BERKOWITZ: If I could just quickly go --

21 THE COURT: Sure. Right.

22 MR. BERKOWITZ: -- through a couple of things.

23 RE CROSS-EXAMINATION

24 BY MR. BERKOWITZ:

25 Q Just I'd like to clarify something. Are you

1 familiar with the fact that Teresa Hipple at the time  
2 had two promissory notes totaling \$350,000?

3 A I am aware based upon the accounting records that  
4 she loaned \$350,000 to the business.

5 Q Okay. In your record -- I'll call it your record --  
6 the spreadsheet that you did, I think it's 6 or 9.

7 A Six.

8 Q Six. That shows other loans that she made?

9 A Yes.

10 Q So this document is less than on your document?

11 A Yes.

12 Q It doesn't includes other things?

13 A Correct.

14 Q Okay. And so we start -- our document starts with  
15 350?

16 A Yes.

17 Q Okay. And would you agree with me that if  
18 additional payments were made to Teresa Hipple, the  
19 amount due on those loans would be reduced? If she  
20 received payments that aren't reflected on your exhibit  
21 which claims that she is owed less than you're claiming  
22 she's owed --

23 A Correct.

24 Q -- she received other payments?

25 A If that's the case.

1 Q Okay. And if you could -- I'm going to show you  
2 Exhibit 114.

3 THE COURT: Plaintiff's 114?

4 MR. BERKOWITZ: Plaintiff's 114, Your Honor.

5 MR. HIPPLE: 114?

6 MR. BERKOWITZ: Yes, the Teresa one.

7 BY MR. BERKOWITZ:

8 Q Would you tell us, sir, on Exhibit D-9, when's the  
9 last payment that you had reflected for Teresa?

10 A June of 2009.

11 Q 2009. So if Teresa received payments after June of  
12 2009, that would reduce the value of the loan?

13 A Yes.

14 Q Okay. Now, I'm going to show to you Plaintiff's  
15 Exhibit 114, and I'm going to represent to you that  
16 these are all checks payable to Teresa Hipple, and if  
17 you would like to look through that --

18 MR. HIPPLE: What was the number? I'm sorry.

19 MR. BERKOWITZ: 114.

20 MR. HIPPLE: The plaintiff?

21 MR. BERKOWITZ: Yes.

22 (Pause in proceedings.)

23 THE WITNESS: Okay.

24 BY MR. BERKOWITZ:

25 Q So when you reflect on this chart those payments --

1 A Yes.

2 Q -- we're making the amount that we claim to be due  
3 from SCIX to be less, correct?

4 A Correct.

5 Q Okay. So we're being fair in our analysis here?  
6 We're including payments you didn't have the records to  
7 include?

8 A That's correct.

9 Q Okay. Now, let's look at the interest on -- I'm  
10 sorry, you're looking at -- on the --

11 A Teresa loan.

12 Q -- the Teresa loan on yours.

13 A Yes.

14 Q And did you compound that interest?

15 A Yes.

16 Q Okay. And if you look at our calculation, and I'll  
17 tell you that that's simple interest, correct?

18 A Yes.

19 Q That's less than the compound interest would be,  
20 correct?

21 A Yes.

22 Q Because compound puts interest on interest?

23 A Yes.

24 Q And we didn't do that?

25 A Correct.

1 Q So that our calculation of how much is due is less  
2 than what would come from your record?

3 A Correct.

4 Q Okay. And if we had applied a 12 percent interest  
5 to our records upon the occurrence of a default, you  
6 would agree with me that when we confess judgment, and  
7 I'm going to represent to you that we did, we could have  
8 calculated 12 percent interest.

9 A If that's what the note called for.

10 Q Sure. Okay. And that we did not start compounding  
11 interest until November, 2010. So that if we had  
12 compounded it before when the confession of judgment was  
13 entered in 2003, we would have come up with a bigger  
14 number at the end of the day?

15 A Yes.

16 Q Substantially bigger?

17 A Yes.

18 Q Okay.

19 MR. BERKOWITZ: I have no further questions,  
20 Your Honor.

21 THE COURT: Anything else?

22 MR. HIPPLE: No further questions, Your Honor.

23 THE COURT: Okay. Thank you, sir. You're  
24 excused.

25 THE WITNESS: You're welcome.

1 THE COURT: Thank you for coming.

2 (Witness excused.)

3 THE COURT: Let's take a five-minute break,  
4 all right? Okay. I'll see you in five minutes.

5 (Recess, 9:50 a.m. to 9:57 a.m.)

6 THE COURT: All right. Please be seated. Mr.  
7 Hipple, who's your next witness?

8 MR. HIPPLE: We have a question, Your Honor.

9 THE COURT: Sure.

10 MR. HIPPLE: Then -- having to do with my  
11 reading part. I -- we agreed that I can read so far and  
12 then when it gets to the technical reading part, that  
13 we're in agreement that Mr. Pederson can read his own  
14 questions.

15 MR. BERKOWITZ: Your Honor, I said I had no  
16 objection. Mr. Geisser had a lot of leeway, and I don't  
17 want to make things --

18 THE COURT: Right.

19 MR. BERKOWITZ: -- more complicated than they  
20 need to be.

21 THE COURT: Right. I have an intern. Would  
22 you want my intern to help you?

23 MR. HIPPLE: Certainly.

24 THE COURT: Okay. Ms. Lemmo, why don't you  
25 come up? Mr. Pederson, you can take the stand. Do you

1 have a problem with that?

2 MR. BERKOWITZ: No.

3 THE COURT: Yes. Okay.

4 MR. HIPPLE: Thank you, Your Honor.

5 MR. BERKOWITZ: I think this would be her  
6 first courtroom appearance so she -- we should make a  
7 note of that for her.

8 THE COURT: Right. Go ahead, Mr. Pederson.

9 MR. HIPPLE: I didn't know she was your  
10 intern. I asked her, I'll pay you to read today.

11 THE COURT: No, we don't -- you're not paying  
12 her.

13 MR. HIPPLE: Okay.

14 THE COURT: Go ahead.

15 COURTROOM DEPUTY: Please raise your right  
16 hand please.

17 WILLIAM PEDERSON, Defendants' Witness, Sworn.

18 COURTROOM DEPUTY: Please state and spell your  
19 full name for the record.

20 THE WITNESS: Sure. My name is William  
21 Pederson, P-E-D-E-R-S-O-N.

22 THE COURT: You may proceed, Mr. Hipple.

23 MR. HIPPLE: You may -- what is your first  
24 name?

25 MS. LEMMO: Ann.

1 MR. HIPPLE: Ann? Okay. You may --

2 DIRECT EXAMINATION

3 (Questions being read by Ms. Ann Lemmo, intern  
4 for Judge Rueter.)

5 BY MR. HIPPLE:

6 Q What type of firm is EisnerAmper?

7 A It's a public accounting, tax and financial services  
8 firm.

9 Q And what is your position there?

10 A I'm a director with EisnerAmper.

11 Q How long have you been employed by EisnerAmper?

12 A Just over six years.

13 Q Were you always a director there?

14 A No. Prior to being a director, I was a senior  
15 manager when I first came on board.

16 Q Do you have a particular area of work on which you  
17 focus?

18 A I focus on bankruptcy and litigation.

19 Q Before we get into your duties and responsibilities  
20 at EisnerAmper, I'd like to ask you about your education  
21 and employment history.

22 A Sure, go ahead.

23 Q First, are you a certified public accountant?

24 A Yes, I am.

25 Q And for how long have you been a CPA?



1 A I've been a CPA for approximately 30 years in  
2 Maryland and a few years in Pennsylvania.

3 Q Where did you go to college?

4 A Undergraduate, I went to Roanoke College down in  
5 Salem, Virginia.

6 Q And what degree did you obtain there?

7 A I obtained a Bachelor of Business Administration.

8 Q When did you receive your Bachelor's?

9 A 1978.

10 Q Did you get -- did you do any post-graduate work?

11 A Yes. I attended the University of Baltimore and  
12 earned an MBA degree in 1985 and then I also earned a  
13 Masters of Finance -- I'm sorry, Masters of Science in  
14 Finance in 1992. I also attended law school at Loyola,  
15 New Orleans and earned a JD.

16 Q Did you take the bar exam?

17 A Yes.

18 Q Did you ever practice law?

19 A I clerked for a bankruptcy firm in New Orleans, so I  
20 was under the supervision of a Judge -- I'm sorry, of a  
21 Judge -- of an attorney for a couple years while I was  
22 in law school, but no, I've not actually practiced law.

23 THE COURT: Would you keep your voice up, Mr.  
24 Pederson, please.

25 THE WITNESS: Sure. I'm trying to get this --

1 THE COURT: Yes, move that down. Thank you.

2 BY MR. HIPPLE:

3 (Questions being read by Ms. Ann Lemmo, intern  
4 for Judge Rueter.)

5 Q What practice area?

6 A In his practice, it was bankruptcy and there was  
7 some tort litigation involving accounting malpractice.

8 Q Other than being a CPA and a JD, do you hold any  
9 other designations?

10 A Yes. I hold a number of designations under the  
11 AICPA. I'm accredited in business valuation. I'm also  
12 certified in financial forensics. I am a CIRA, which is  
13 certified in insolvency and restructuring. I'm also a  
14 certified fraud examiner and I'm certified in distressed  
15 business valuation.

16 Q For each designation, can you tell the Court what is  
17 -- what it means and how long you have held it?

18 A I do have to look at my notes, because it -- the  
19 years sometimes get confusing. I've been an ABV since  
20 2007. I've been a CFF since 2008. CIRA I passed in  
21 2005. CDBV was 2007 and the CFE was in 2004.

22 Q And please describe in detail for the Court the  
23 scope of the work that you perform for clients of  
24 EisnerAmper?

25 A Well, I work primarily in bankruptcy and litigation

1 support. With regard to bankruptcy, I've worked for  
2 both debtors and creditors committees. I do work as a  
3 financial analyst and I do budget work. I've helped  
4 them file schedules. I look at claims, I do feasibility  
5 and I do liquidation analysis. I also evaluate  
6 potential claims against D&Os, lenders and other  
7 parties.

8 In terms of litigation support, I'm usually  
9 working on adversarial proceedings that are coming out  
10 of a bankruptcy litigation but not always. Sometimes  
11 they're just plain proceedings, and it -- and it also  
12 involves various valuation issues and analysis.

13 Q And for how long have you been providing these types  
14 of services to clients?

15 A About 15 years.

16 Q Do you serve as a consulting expert for clients in  
17 bankruptcy or other litigation?

18 A Yes, sometimes I'm a named expert, but other times,  
19 I'm a consulting expert and I work in the background and  
20 either parallel a case or actually do the background  
21 work, and another analyst or adviser will come in and  
22 pick up the work.

23 Q Have you ever served as a testifying expert?

24 A I have testified in deposition as well as for the  
25 American Arbitration Association.

1 Q How would you break down on a percentage basis the  
2 amount of work you have performed as a consulting expert  
3 versus a testifying expert?

4 A I am kind of split. It just will vary from year to  
5 year, but perhaps -- it's really evenly split, 40/50  
6 percent per year, and the other part of the year will be  
7 devoted to the other side of it.

8 Q About how many times have you been proffered as an  
9 expert in court, to provide evaluation of a business or  
10 asset?

11 A I've been proffered a number of times. I would say  
12 somewhere between five and ten.

13 Q Prior to this case, have you been asked to provide  
14 evaluation of assets, a business or an ownership  
15 interest in a business in matters involving a claim of  
16 fraudulent transfer?

17 A Yes, several times.

18 Q And in any of these cases involving claims of  
19 fraudulent transfer, were you asked to provide an  
20 opinion as to the valuation of assets or a business?

21 A Yes. I have provided opinions and I've worked with  
22 others in our firm to provide an opinion.

23 Q And can you describe for the Court your involvement  
24 in the matters involving claims of fraudulent conveyance  
25 and the status of each?

Mr. Pederson - Direct

53

1 A Well, I research issues, I gather documents, draft a  
2 report. If there are other staff involved, I'll  
3 supervise the staff. I'll work with other members of  
4 the firm and we'll -- we'll move forward preparing a  
5 report and running through discovery.

6 Q In connection with work you have done in the context  
7 of bankruptcy, have you ever been retained by a  
8 bankruptcy trustee to provide valuation services?

9 A Yes, I have.

10 MR. BERKOWITZ: Your Honor, we'll stipulate to  
11 the expert use of this witness.

12 THE COURT: Mr. Hipple, do -- okay.

13 MR. HIPPLE: Yeah, Your Honor. Yeah.

14 THE COURT: I do find Mr. Pederson is an  
15 expert in the area of business evaluations and I'll  
16 allow him to testify as to that area. Do you want to  
17 ask further questions on this area --

18 MR. HIPPLE: No, we're just --

19 THE COURT: -- or do you want to move to the  
20 substance?

21 MR. HIPPLE: -- we're just about done this  
22 anyway, so we --

23 THE COURT: Okay. Fine. All right.

24 MR. HIPPLE: That's fine.

25 THE COURT: Well, then finish him up, Ms.

1 Lemmo, go ahead.

2 THE WITNESS: Well, if we're finished, you  
3 could skip to page six.

4 THE COURT: Okay.

5 MS. LEMMO: Yes.

6 BY MR. HIPPLE:

7 (Questions being read by Ms. Ann Lemmo, intern  
8 for Judge Rueter.)

9 Q I'm showing you a document marked as Exhibit D-39A.  
10 Do you recognize it?

11 MR. HIPPLE: Black book.

12 MR. BERKOWITZ: Your Honor, I believe it's the  
13 witness' CV --

14 MR. HIPPLE: Yeah, it's the --

15 MR. BERKOWITZ: -- to which we stipulate. We  
16 have no objection to it.

17 THE COURT: 39.

18 MR. HIPPLE: 39A, Your Honor.

19 THE COURT: Okay. 39A.

20 THE WITNESS: Your Honor, I think we're headed  
21 to 39, are we not?

22 THE COURT: 39 is your CV.

23 MR. BERKOWITZ: 39A, Your Honor, is the CV.

24 THE COURT: Is the CV. 39 is the report.

25 THE WITNESS: Correct.

1 THE COURT: Okay. Do you want him to go to  
2 the report, Mr. Hipple?

3 MR. HIPPLE: Yes. Yes, Your Honor.

4 THE WITNESS: Yes, I recognize this document.

5 BY MR. HIPPLE:

6 (Questions being read by Ms. Ann Lemmo, intern  
7 for Judge Rueter.)

8 Q Tell the Court what it is.

9 A This is the defendants' expert report.

10 Q Did you prepare this document?

11 A I did.

12 Q Can you tell the Court if it is an accurate  
13 depiction of your education and experience?

14 A It is.

15 Q In reference to employers identified on Exhibit D-  
16 39A other than EisnerAmper, can you give the Court a  
17 brief description of your duties and responsibilities  
18 you performed for each employer?

19 A I think you're skipping around a little bit.

20 THE COURT: Yes.

21 MR. HIPPLE: Yeah, we'll skip that part,  
22 right?

23 MS. LEMMO: Okay.

24 THE COURT: Right.

25 THE WITNESS: I think we're at the top of page

1 seven.

2 THE COURT: Page what?

3 THE WITNESS: This is not a document, Your  
4 Honor.

5 THE COURT: Oh.

6 BY MR. HIPPLE:

7 (Questions being read by Ms. Ann Lemmo, intern  
8 for Judge Rueter.)

9 Q And did you prepare this document?

10 A Yes.

11 Q And did you prepare that in connection with your  
12 engagement by defendants as an expert in this action?

13 A Yes.

14 Q Can you tell the Court what the scope of that  
15 engagement is?

16 A I was engaged to review the plaintiff's expert  
17 report and provide a rebuttal analysis.

18 Q And what did you do in order to prepare your report?

19 A Well, I read Mr. Geisser's report, I looked at his  
20 document listing. I reviewed documents provided by  
21 counsel. I performed research on PUFTA. I looked at  
22 valuations, patents, competitors and reviewed the  
23 SSVS-1.

24 Q And did you review Mr. Geisser's report and all of  
25 its attachments before preparing your opinion?



1 A Yes, I did.

2 Q And were you present in the courtroom when Mr.  
3 Geisser testified in this case?

4 A Yes, I was.

5 Q And were you present when Mr. Geisser was deposed in  
6 March, 2013?

7 A He was actually deposed in March of 2014 as I  
8 recall, but, yes.

9 Q Having sat through that deposition, having read Mr.  
10 Geisser's opinion and then having been present in the  
11 courtroom when Mr. Geisser testified, is it clear to you  
12 what the subject of his purported valuation is?

13 A No. He actually didn't define the premise of value  
14 and he wasn't clear as to what he was trying to value.

15 Q What is a premise of value?

16 A When we talk about a premise of value we're  
17 referring to what the assumption's going to be with  
18 regard to the business on a go-forward basis that could  
19 include going concern or liquidation.

20 Q What is the standard of value?

21 A The standard of value is -- is something a little  
22 bit different, and that is where we try to zero in on  
23 what really the purpose of the report is. And the  
24 standard of value would be -- fair market value would be  
25 obviously one very well understood, or fair value or

1 market value. There's a lot of variations on it, but  
2 that's what a standard of value is.

3 Q What is the identity of subject interest?

4 A The identity of subject interest is the subjects  
5 that's actually being valued. It could be the assets,  
6 it could be the company as a whole. It could be a  
7 specific group of assets.

8 Q Why do you say that Mr. Geisser's -- Mr. Geisser is  
9 unclear or that he is confused about what he is valuing?

10 A Well, within his report he makes references to a  
11 number of different subjects, and I do not have a copy  
12 of Mr. Geisser's report in front of me.

13 THE COURT: Here you go.

14 THE WITNESS: Thank you, Your Honor.

15 But within his report, he at different points,  
16 and we can get into the detail if we need to, but he  
17 talks about valuing 100 percent interest of SCIX. I  
18 think he does that in Section 5, so this is an example  
19 of some of his opinions.

20 "I prepared a calculation of value for 100  
21 percent interest in the business formerly known as  
22 SCIX."

23 100 percent interest really relates to assets  
24 minus the liabilities, and it would be the equity  
25 holding that somebody would have in an interest. And he

1 doesn't do that here, but he, nonetheless, tells us that  
2 that's what's going on here.

3 In other places he talks about he valued SCIX  
4 which one would presume means the whole company, and  
5 this is in Part 2, he indicates, "preparing a  
6 calculation of value of SCIX, LLC."

7 When we normally look at a full entity and  
8 we're looking at the value of an entity, we'll take a  
9 look at assets minus liabilities to give you the actual  
10 value of the entity.

11 Elsewhere he talks about the transferred  
12 assets of SCIX, and he doesn't tell us what those are,  
13 but he -- he brings that up. So we've actually got  
14 three points of reference here in terms of what he's  
15 valuing, but it's -- it's not clear as to what he's  
16 doing with them. So that's why there is -- we bring up  
17 the issue that there's an identity of the subject  
18 interest at issue here.

19 Q What is the effect of the subject of Mr. Geisser's  
20 purported valuation being unclear?

21 A Well, if he's going to value the entire business,  
22 then he's going to need to know what the liabilities  
23 are. This is simply assets minus liabilities equals  
24 equity, and the equity would be the 100 percent  
25 interest. Likewise, if we're going to value a business,

1 we need to look at its liabilities.

2 Now, it's very clear, Mr. Geisser didn't do  
3 that here. He doesn't know what the liabilities are and  
4 he doesn't indicate that he did when he -- in his  
5 report. So he's talking about doing valuations of 100  
6 percent interest but it's just the components aren't  
7 here to do that.

8 So it's important to know what your -- what  
9 your frame of reference is so that you can look at the  
10 right components and come up with a value that -- that  
11 lines up with what your subject is.

12 Q When you read Mr. Geisser's ultimate opinion in his  
13 report, did you note that he qualified the word "assets"  
14 in any way?

15 A The only point he really qualified it is he did  
16 mention at one point the transfer of assets but he  
17 didn't define what those assets were.

18 Q And in Mr. Geisser's report, is there any reference  
19 to a list of the assets transferred?

20 A No, there isn't.

21 Q In Mr. Geisser's report, does he ever define which  
22 assets were, in fact, conveyed or what the book value of  
23 those assets were, either before or after the transfer?

24 A No, he did not do that.

25 Q Having reviewed Mr. Geisser's report, attended his

1 deposition and listened to his testimony at trial, can  
2 you tell the Court whether Mr. Geisser was retained by  
3 plaintiff to perform a valuation engagement?

4 A No, he was not retained to perform a valuation  
5 engagement.

6 Q And what is your understanding to the scope of his  
7 engagement?

8 A Well, he was -- and from his report, he was retained  
9 to analyze financial records and to estimate  
10 distributable cash flow available to owners and insiders  
11 of the subject companies. So that's a little bit  
12 different than -- than what we have been discussing in  
13 terms of valuation of an entity or a valuation. He was  
14 apparently using financial records to estimate  
15 distributable cash flow.

16 Q And did Mr. Geisser perform services using a  
17 calculation of value methodology?

18 A Yes, he did.

19 Q And is there an authoritative treatise in your  
20 industry which sets forth the definition of calculation  
21 of value methodology?

22 A Yes.

23 Q And what is that authoritative source?

24 A It is the AICPA standards -- statement of standards  
25 on valuation services.

1 Q What does the AICPA stand for?

2 A I'm sorry, American Institute of Certified Public  
3 Accountants.

4 Q Would you agree that a shortcut name for this  
5 authoritative source is SSVS Number 1?

6 A Yes.

7 Q Can you explain the scope of what the SSVS Number 1  
8 covers?

9 A It actually covers the conduct of a CPA involved  
10 with a valuation assignment or engagement.

11 Q And who, if anyone, is bound to use the method set  
12 forth in SSVS Number 1?

13 A Well, it's very specific. It actually applies to  
14 all accountants performing valuations of assets or a  
15 business.

16 Q As a CPA, is Mr. Geisser, plaintiff's expert, bound  
17 to follow these standards?

18 A Yes, he is.

19 Q Are you?

20 A Yes.

21 Q And according to the SSVS Number 1, what is the  
22 definition of calculation of value referenced in that  
23 definition, that in performing a calculation of the  
24 value --

25 A I think you're supposed to stop there.

1 Q Yeah, okay. I'm a little confused.

2 A That's all right. In my report in footnote three, I  
3 actually describe what a calculation engagement is and  
4 it's taken from SSVS-1.

5 "A valuation now" -- sorry -- "a valuation  
6 analyst performs a calculation when the valuation  
7 analyst and the client agree on the valuation approaches  
8 and methods the valuation analyst will use and the  
9 extent of procedures the valuation analyst will perform  
10 in the process of calculating the value of a subject  
11 interest. (These procedures will be more limited than  
12 those of a valuation engagement.)

13 "And, two, the valuation analyst expresses the  
14 result of these procedures as a calculated value. The  
15 calculated value is expressed as a range or a single  
16 amount. A calculation engagement does not include all  
17 the procedures required for a valuation engagement."

18 Q You reference in that definition that in performing  
19 a calculation of value, the valuation analyst and client  
20 agree on the valuation approaches and methods the  
21 valuation analyst will use. Can you explain the effect  
22 of that on the end result of such an engagement?

23 A Well, because he's doing a calculation of value, he  
24 doesn't have to follow -- follow all the guidance that  
25 one would normally use in a conclusion of value.

1 Q And is that what occurred here?

2 A Yes.

3 Q The definition of calculation of value as you read  
4 it provides that such engagement does not include all of  
5 the procedures required for a valuation engagement. Is  
6 there -- is there such a methodology?

7 A Yes, a conclusion of value.

8 Q Does the SSVS Number 1 define conclusion of value?

9 A Yes, it does.

10 Q Can you provide that definition?

11 A Yes. And, again, I'm -- I'm reading from my own  
12 report, footnote four.

13 "A valuation analyst performs a valuation  
14 engagement when the engagement calls for a valuation  
15 analyst to estimate the value of a subject interest and  
16 the valuation analyst estimates the value as outlined in  
17 paragraphs 23 through 45" -- which are in SSVS-1 and are  
18 very specific -- "and is free to apply the valuation  
19 approaches and methodologies he or she deems appropriate  
20 in the circumstances. The valuation analyst expresses  
21 the result of the valuation as a conclusion of value.  
22 The conclusion of value may be either a single amount or  
23 a range."

24 Q When you say conclusion of value, is that the same  
25 as an opinion of value?



1 A Yes.

2 Q And can the two be used interchangeably?

3 A Yes.

4 Q Do you use the same interchangeably?

5 A Yes.

6 Q And can you tell the Court which methodology, if  
7 any, when applied, results in an actual valuation of  
8 assets or a business?

9 A Sure. The conclusion of value or an opinion of  
10 value is what provides an actual amount for a value of a  
11 business.

12 Q As a general matter, how does a calculation of value  
13 engagement differ from a conclusion of value engagement?

14 A Well, a conclusion of value encompasses a full range  
15 of recognized valuation methodologies, procedures and  
16 techniques that provide the expert with information and  
17 tools to formulate an educated opinion of value.

18 A calculation of value is a limited scope  
19 methodology whereby specifically chosen data is  
20 evaluated in a specific and agreed-upon method. It is a  
21 limited procedure engagement which allows the expert to  
22 short cut and altogether ignore standard valuation  
23 techniques. It is a myopic and often distorted  
24 perspective as it is confined to the specific procedures  
25 and documents agreed to in the engagement letter.

1           It is not a valuation and cannot by itself  
2           lead to a conclusion of value.

3           Q    You mentioned that the calculation of value  
4           methodology does not incorporate any of the standard  
5           valuation techniques. What are the three most common  
6           valuation techniques?

7           A    Well, the income approach, the market approach and  
8           the asset approach.

9           Q    Can you briefly explain each technique?

10          A    Sure. When you take a look at an income approach,  
11          you'll take a look at the earnings of the company.  
12          You'll look at the historical earnings and you'll  
13          usually project them out and try to determine where the  
14          company is going in a future period. You can then apply  
15          either a capitalization rate or you can apply a  
16          discounted cash flow.

17                Under a market approach, it actually -- there  
18          are two avenues on the marketing approach, and one is to  
19          look at similar companies doing business. The other is  
20          to take a look at transactions involving similar  
21          companies, in other words, where a company was bought or  
22          sold.

23                And under the last methodology, that would be  
24          the asset approach, you go ahead and take a look at the  
25          individual assets of the company and try to value them

1 as they appear on the balance sheet, but you can bring  
2 them up to fair market value or whatever your -- your  
3 standard of value is.

4 Q And what is the purpose of using these techniques?

5 A Well, the idea behind using the three methodologies  
6 is to reconcile between them and try to get a good feel  
7 for how the numbers are running and whether or not they  
8 make sense. They kind of act as cross-checks between  
9 one another.

10 Q And what does SSVS Number 1 state, if anything,  
11 about the consideration of these three most common  
12 standard valuation techniques in performing a valuation  
13 engagement?

14 A Well, SSVS-1 indicates that these should be  
15 considered in any valuation.

16 Q Do you normally use more than one?

17 A We usually try to use two or three methods, and if  
18 we're not able to use it, we detail why it can't be  
19 used.

20 Q Is it possible that one standard valuation technique  
21 can result in a valuation that is different than the  
22 result of a different standard valuation technique?

23 A Yes.

24 Q And what do you do in such circumstances?

25 A Well, you reconcile the results. If they're

1 inconsistent, you need to figure out why and figure out  
2 how that needs to be addressed.

3 Q And is there an obligation to reconcile these  
4 results?

5 A Yes, there is.

6 Q Where is that obligation found?

7 A It's actually in SSVS Number 1, paragraph 42. I can  
8 read -- read it for you because it's also in my report.

9 Yeah. Paragraph 42, "For a conclusion of  
10 value calls for the reconciliation of results from  
11 different approaches and methodology and assess the  
12 reliability of the results under different approaches."

13 Q What does that reconciliation represent?

14 A It actually represents the valuation.

15 Q When performing a calculation of value, do you also  
16 have to utilize any standard valuation techniques?

17 A Not per se, no. You're not required to do them,  
18 and, therefore, you don't have to reconcile the results.

19 Q In performing his calculation of value, did Mr.  
20 Geisser ignore these standard valuation techniques?

21 A Yes, he did.

22 Q What effect, if any, does this have on the product  
23 of calculation of value engagement?

24 A It makes the -- his determination less reliable.

25 Q Why do you say this?

1 A It's not cross-referenced to anything. Mr. Geisser  
2 used a single approach and it doesn't seem to fit with  
3 anything else. And, again, it's because -- part of the  
4 problem is we're not clear as to what he's valuing. So  
5 it's difficult to figure out how to reconcile what he's  
6 doing.

7 Q Are you familiar with the term fair market value?

8 A Yes.

9 Q And can you tell the Court what your understanding  
10 of that term is?

11 A I think that's also located in my report.

12 "It's the price at which property would have  
13 changed hands between a hypothetical, willing and able  
14 buyer and a hypothetical, willing and able seller acting  
15 at arm's length in an open and unrestricted market when  
16 neither is under a compulsion to buy or sell and when  
17 both have reasonable knowledge of the relevant facts."

18 Q And is that the definition of fair market value used  
19 by others in your profession?

20 A Yes.

21 Q And where does this -- where does that definition  
22 come from?

23 A This actually came from the certified valuation  
24 analyst website which is what they're using, but it also  
25 really relates back to Revenue Ruling 59-60, which is

1 also kind of a cornerstone for -- for how valuation or  
2 for how fair market value is defined.

3 Q Are you familiar with the term reasonably equivalent  
4 value?

5 A Yes.

6 Q And what is the source or sources of your  
7 understanding of that term?

8 A Actually, there are two sources. One, I did take a  
9 look at the Pennsylvania Uniform Fraudulent Transfer Act  
10 and then I also looked at what was in plaintiff's motion  
11 for summary judgment.

12 Q And do you recall how plaintiff defined that term in  
13 her motion for summary judgment?

14 A Yes. "Reasonably equivalent value is assessed based  
15 upon totality of the circumstances test considering a  
16 variety of factors such as fair market value compared to  
17 the actual price paid and the arm's length nature of the  
18 transaction."

19 Q Did Mr. Geisser's report include any analysis of the  
20 totality of the circumstances relating to the assets  
21 transferred by SCIX to Clement Hipple?

22 A No, he did not.

23 Q Did Mr. Geisser ever determine the fair market value  
24 of assets transferred by SCIX to Clement Hipple on  
25 October 13th, 2010?

1 A He did not.

2 Q Do you see anywhere in Mr. Geisser's report where he  
3 performed an analysis of what a willing buyer would have  
4 paid for the assets that were transferred or what a  
5 willing seller would have sold the assets for?

6 A No, he did not.

7 Q Have -- having reviewed Mr. Geisser's report, does  
8 it even reference the term fair market value?

9 A No. Fair market value does not appear in his  
10 report.

11 Q Are there factors that would be properly considered  
12 in determining fair market value of a business or a 100  
13 percent interest in a business?

14 A Yes.

15 Q What might some of those factors be?

16 A Well, as we already talked about, the liabilities  
17 are certainly something you need to take a look at. You  
18 need to look at judgments against the business. You  
19 would want to take a look at the current economy, the  
20 quality of the work force, whether the company had  
21 equity in it, pending litigation, liens on assets,  
22 ability to get credit. There are a number of factors  
23 you would be taking a look at when you enter into a fair  
24 market valuation. Those are just some of them.

25 Q Any others?

1 A Actually, there are always more, because each case  
2 is a little bit unique, so you need to get into it  
3 really deep to figure out what has an impact, what does  
4 not.

5 One of the interesting things about this case  
6 is that when we did some patent research, we found that  
7 there's a new patent out there for this -- a similar  
8 product, and so that would be something you would  
9 consider when you take a look at -- at where this  
10 company is going, what its prospects might be.

11 Q Did Mr. Geisser consider any of the factors in  
12 performing his calculation of value?

13 A No, he did not.

14 Q Are any of those factors analyzed in his report?

15 A No, they're not.

16 Q Is the calculation of value methodology used by Mr.  
17 Geisser the appropriate methodology to determine the  
18 fair market value of assets, a business, or the fair  
19 market value of 100 percent interest in a business?

20 A No.

21 Q In this case, does Mr. Geisser's calculation of  
22 value equate to fair market value?

23 A No, it doesn't.

24 Q In Mr. Geisser's report, does Mr. Geisser at all  
25 address or explain why the defendants or any individuals



1 would be interested in acquiring the assets of SCIX as  
2 of October 13th, 2010 for \$1.75 million?

3 A No, he does not.

4 Q Now, are you familiar with the term reasonably  
5 equivalent value?

6 A Yes.

7 Q What is the source or sources of your understanding  
8 of that term?

9 A As we discussed a little while ago, I took a look at  
10 the Pennsylvania Uniform Transfer Act as well as the  
11 plaintiff's motion for summary judgment.

12 Q According to P-U-F-T-A, how is that term defined to  
13 your knowledge?

14 A As a regular --

15 MR. BERKOWITZ: Objection as -- I'm sorry,  
16 P-U-S-T-A, I'm --

17 MS. LEMMO: P-U-F-T-A. Sorry.

18 THE WITNESS: I think she said P-U-F-T-A,  
19 PUFTA.

20 MR. BERKOWITZ: I'm sorry?

21 THE WITNESS: PUFTA.

22 MR. BERKOWITZ: Oh, okay.

23 THE WITNESS: That's all right.

24 MS. LEMMO: I'm sorry.

25 MR. BERKOWITZ: I'm sorry, I'm sorry.

1 MR. HIPPLE: Imagine if I was reading.

2 THE COURT: You go -- go ahead.

3 THE WITNESS: Okay. When we're referring to  
4 PUFTA, we're talking about, under its terms, a regularly  
5 conducted, non-collusive sale.

6 BY MR. HIPPLE:

7 (Questions being read by Ms. Ann Lemmo, intern  
8 for Judge Rueter.)

9 Q And according to plaintiff, how did she define the  
10 term in her memo of law in support of motion for summary  
11 judgment?

12 A We went through it, but "Reasonably equivalent value  
13 is assessed based on the totality of the circumstances,  
14 considering a variety of factors such as fair market  
15 value compared to the actual price paid and the arm's  
16 length nature of the transaction."

17 Q And did Mr. Geisser perform an REV assessment based  
18 upon either of the two definitions you have referenced?

19 A He did not. And for the record, REV is reasonably  
20 equivalent value.

21 Q Does Mr. Geisser provide any definition in his  
22 report for the term reasonably equivalent value?

23 A No, he does not.

24 Q Now, in this case, could the calculation of value  
25 methodology as applied by Mr. Geisser result in any

1 actual valuation of assets or a 100 percent interest in  
2 the business?

3 A No.

4 Q Does Mr. Geisser's application of the calculation of  
5 value methodology result in a determination of  
6 reasonably equivalent value?

7 A No, it does not.

8 Q Assuming Mr. Geisser's intent was to value a 100  
9 percent interest in the business of SCIX, does Mr.  
10 Geisser's methodology consider the requisite totality of  
11 the circumstances to determine whether there was an  
12 exchange of REV?

13 A No, there's nothing in his report that he analyzed  
14 or even considered fair market value.

15 Q Why not?

16 A Because the value of -- his calculation of value  
17 methodology doesn't equate to fair market value. It  
18 doesn't incorporate a lot of the standard valuation  
19 techniques which we would use to determine a fair market  
20 value.

21 Q What is the effect, if any, of Mr. Geisser's failure  
22 to determine the fair market value of the assets  
23 transferred by SCIX to Clement Hipple on October 13th,  
24 2010?

25 A He actually -- the effect is that he can't conclude

1 with any level of certainty that the reasonably  
2 equivalent value of the transfer of SCIX assets as of  
3 October 13 would have been 1.75 million. The requisite  
4 totality of the circumstances test demands that he  
5 consider all aspects of the transfer, including fair  
6 market value, and he fails to do this.

7 Q What is the proper methodology to be used to  
8 determine the fair market value of assets or a business?

9 A Conclusion of value or an opinion of value.

10 Q Why do you say that?

11 A The valuation -- I'm sorry, the valuation engagement  
12 approach allows for the requisite work to develop the  
13 foundation on which to opine the fair market value. In  
14 other words, going back to the three methodologies and  
15 reconciling them and also taking a look at the other  
16 potential impacts of, for example, the economy, just the  
17 general market in terms of which he's operating with,  
18 the patents, for example.

19 Q Was that foundation developed here?

20 A No, it was not.

21 Q Was Mr. Geisser's conclusion as to reasonably  
22 equivalent value -- it cuts off --

23 A Yeah.

24 Q Does the application of calculation of value  
25 methodology allow for any shortcuts?

1 A Yes, absolutely.

2 Q Did Mr. Geisser engage in any shortcuts in applying  
3 his calculation of value methodology?

4 A Yes, in terms of not being a conclusion of value,  
5 yes.

6 Q Were there any factors -- facts or factors that Mr.  
7 Geisser failed to consider which would be considered in  
8 a fair market value analysis of the business?

9 A Yes.

10 Q What would be such factors or facts that he failed  
11 to consider?

12 A Well, he didn't do an analysis of the assets, the  
13 liabilities, the competitors, customers, industry,  
14 suppliers, raw materials, the ability to borrow funds,  
15 just non-financial information, economy and patents.

16 Q Why do you say that?

17 A Well, because he -- he's making a lot of assumptions  
18 when he goes to an earnings approach. He's assuming  
19 everything is in place and it continues forever without  
20 any -- doing any underlying analysis to really determine  
21 if that's the case.

22 Also it's not clear whether or not he knew  
23 that the website wasn't owned by SCIX. And so there's  
24 some question as to those. The website which was  
25 certainly being utilized to sell the product is kind of

1 built into the numbers in the way he did his  
2 methodology, but it may not have been an asset. It's  
3 also not clear that that was transferred. So there are  
4 issues that really need to be investigated, and if they  
5 have some conclusion, he could bring that out in his  
6 report.

7 Q Are there any other facts or factors Mr. Geisser  
8 failed to consider?

9 A Well, I did some research on the patents, and I  
10 found that there were actually three patents and two of  
11 them had expired. In Mr. Geisser's report, he  
12 references that it's a unique patented product. I think  
13 he makes another reference to it as well, and he  
14 apparently wasn't aware that the patents had actually  
15 expired at the time of the transfer or at least two of  
16 them had.

17 Q In his report, does Mr. Geisser attribute some value  
18 to SCIX based upon the facts that it had patents?

19 A As I just described, he called it a unique patented  
20 product, so he actually was considering that the patent  
21 was in place.

22 Q And does he disclose anywhere in his report that one  
23 of the patents had expired less than a year before the  
24 subject transaction?

25 A No, he did not.

1 Q Did you investigate as to whether any of the patents  
2 were expired?

3 A Yes, I did.

4 Q And what did you do?

5 A I was actually able to go on to the U.S. Patent  
6 website and with information I had with regard to patent  
7 numbers, it wasn't too hard to -- to kind of delve into  
8 this a little bit and determine which patents were out  
9 there related to this product, and as I alluded to  
10 earlier, there's actually a new patent out there by a  
11 different company.

12 Q What were the results of that investigation?

13 A I think I just touched on that.

14 Q Under a valuation engagement, for how long do you  
15 attribute value to the -- to such intangible property  
16 such as patents?

17 A It will vary a little bit, but certainly you do want  
18 to look at when a patent expires, and so at that point  
19 in time, you do need to question whether or not there's  
20 ongoing value associated with the product, and sometimes  
21 there is; sometimes there isn't. It just depends.

22 Q And what effect does expiration of this patent have  
23 on the valuation of SCIX or an ownership interest in  
24 SCIX assuming that is what Mr. Geisser purports to  
25 value?

1 A Well, it fails to consider that SCIX might not have  
2 the exclusive right to sell the Steel Seal product at  
3 October 13, 2010, the day of the transfer, and that some  
4 of these patents had actually expired. One of the other  
5 things he failed to consider when he was kind of looking  
6 at this part of the analysis is that Scientific Chemical  
7 had the confidentiality agreement with Colonial  
8 Chemical.

9 So it was actually an outside or a different  
10 company than SCIX that had the ability to order up  
11 product. Also that Clem Hipple was not an owner of SCIX  
12 so with his understanding of the formula and with the  
13 expired patents, he could go out in the marketplace and  
14 order up from Colonial Chemical and start a business.

15 Q And what effect, if any, does the existence of that  
16 confidentiality agreement have on the value of SCIX as  
17 of October 13th, 2010?

18 A Well, as I started to get into, Mr. Hipple has the  
19 ability to -- to order more product.

20 Q Do you know if Mr. Geisser considered this in coming  
21 to his purported valuation?

22 A He did not.

23 Q Assuming Mr. Geisser's intent was to value SCIX as a  
24 going concern or a 100 percent ownership interest in  
25 SCIX as of October 13th, 2010, would a valuation of



1       either require consideration of the liabilities of SCIX  
2       as of that date?

3       A    Yes.  As we described earlier, you'd have to know  
4       what the liabilities are to determine the value of the  
5       company and certainly 100 percent interest in the  
6       company.

7       Q    Why do you say that?

8       A    Because simply assets minus liabilities is going to  
9       equal equity and that's what we're talking about when we  
10      talk about 100 percent interest.

11      Q    In reviewing Mr. Geisser's report, did you see where  
12      he took into consideration the liabilities of SCIX as of  
13      October 13th, 2010?

14      A    No, he did not.

15      Q    Is the failure to consider the liabilities of SCIX  
16      consistent with utilizing even a calculation of value  
17      methodology?

18      A    Not entirely.  But, again, we're not clear as to  
19      what he's valuing.  If he's doing a calculation of  
20      value, which is a limited procedure, he would still need  
21      to form some basic calculations.  And so if he's really  
22      trying to value 100 percent interest in SCIX, he's going  
23      to need to know what the liabilities are.

24      Q    As to the assets -- as to the assets of SCIX, what,  
25      if anything, did he fail to consider?

1 A He didn't seem to consider that -- that all the  
2 assets were not transferred to Clem Hipple.

3 Q What assets were not transferred?

4 A As I understand it, the patents were not transferred  
5 and the website was not transferred.

6 A Now, with respect to the data used to perform a  
7 valuation, does SSVS Number 1 provide any guidance?

8 A Yes. And Mr. Geisser read the -- or he actually  
9 read it to himself yesterday -- under SSVS-1, it's  
10 paragraph 43, and in my footnote 24, it relates to  
11 subsequent events. And what I have in my footnote is,  
12 "Generally the valuation analyst should only consider  
13 circumstances existing at the valuation date and events  
14 occurring up to the valuation date."

15 Now, of course, Mr. Geisser used a lot of data  
16 from 2011 and 2012 which is obviously subsequent to the  
17 transfer date. Now, yesterday after reading that  
18 paragraph, Mr. Geisser indicated that he was not bound  
19 by that paragraph. However, paragraph 46 which is  
20 related to calculation of value, specifically indicates  
21 that a calculation of value is subject to this  
22 requirement.

23 Q Do you have an understanding as to why data existing  
24 at the valuation date and events occurring up to the  
25 valuation date are to be considered?

1 A Yes.

2 Q What is that understanding? Data occurring after  
3 the transfer date is generally -- oh, I'm sorry.

4 A That's all right. What we're getting at here is if  
5 you're using data post-transaction, you're no longer  
6 within the realm of market value, because as we also  
7 read yesterday from Shannon Pratt, that when you're  
8 dealing with market value, you can only look at  
9 information up to the date of the transfer which is  
10 known or knowable.

11 When you go past that date, then you're really  
12 outside the realm of fair market value and really you're  
13 just doing some other type of analysis, a back-flow  
14 analysis, however you want to refer to it, and you're no  
15 longer in the realm of fair market value. So this is  
16 one of the reasons that his calculation of value just  
17 can't fit the mold because fair market value, by  
18 definition, doesn't include subsequent information.

19 Q And why is that?

20 A It's because this is not information that's  
21 available to anybody at the time of the transfer. You  
22 can only use information that you know at the time or up  
23 to the time of the transfer. Anything after that is  
24 hindsight.

25 Q And is -- and is there a way to get around using

1 data existing at the valuation date and events occurring  
2 up to the valuation date.

3 A Hang on a second. Well, what's going on here is Mr.  
4 Geisser was obviously aware of the garnishment that took  
5 place in September and up to October 13. It's not clear  
6 how he used that information in his analysis. When  
7 we're talking about subsequent events, this is actually  
8 a contemporaneous event and I think we're going to get  
9 into this in a minute anyway as to what's going on with  
10 -- he doesn't perform a solvency analysis. He doesn't  
11 know if the entity is a going concern.

12 I'm sorry, I'm getting off track. Why don't  
13 you go ahead and continue.

14 Q The next question I have is, "What is that?"

15 A All right. I'm at the top of 25, "Is SSVS Number 1,  
16 paragraph 43" --

17 Q Okay.

18 A -- "required to be considered even when a  
19 calculation of value is conducted?"

20 And I indicate, "Yes," and that's paragraph  
21 46.

22 Q Can you identify or explain the approach Mr. Geisser  
23 used to come to his calculation of value?

24 A He utilized information for the 12-month period  
25 ending October, 2010, and then -- for SCIX -- and then

1 he used Steel Seal Pro for 2011 and 2012. He actually  
2 only had what he called nine good months of data for  
3 2012 so he ended up annualizing that to come up for a  
4 full year of 2012.

5 Q What is seller's discretionary earnings?

6 A It's a valuation methodology used for smaller  
7 businesses based on the earnings of the company and they  
8 usually come up with a multiplier. Generally, it's the  
9 historic three to five years of a company is what you  
10 look for.

11 Q For what years does Mr. Geisser purport to determine  
12 seller's discretionary earnings?

13 A His calculation uses the years 2010, 2011 and 2012.

14 Q How is SDE different from a business expense?

15 A SDE really relates to what the compensation might be  
16 to a potential owner, and so a buyer might look at that  
17 and try to determine what the value is to a particular  
18 buyer. SDE kind of has an issue with that because each  
19 buyer's requirements are going to be different. So  
20 that's also what pulls this away from fair market value  
21 because it's not a hypothetical buyer. It's a specific  
22 buyer.

23 A buyer needs to be able to operate this  
24 business and step into this business. If he had  
25 somebody interested in this business who didn't want to

1 step into it, then that person would adjust the SDE  
2 downward to account for, for example, a manager or a  
3 person in the company. And so it's going to vary a  
4 little bit as to what the circumstances are when you get  
5 into what SDE is.

6 But it's essentially the income and perks that  
7 can be spun off a small business for generally just one  
8 person.

9 Q How is seller's discretionary earnings different  
10 from a liability?

11 A Again, here we're talking about earnings and  
12 contributions. Liabilities, of course, would be a note  
13 or other -- even accounts payable would be considered a  
14 liability, and those weren't looked at here.

15 Q And would that loan itself constitute a liability?

16 A A loan would certainly be a liability and it  
17 wouldn't be part of SDE.

18 Q And in performing his calculation of value, did Mr.  
19 Geisser deem payments to any particular entities as  
20 seller's discretionary earnings?

21 A Yes, he did.

22 Q Do you recall what those entities were?

23 A I think these are from Exhibit D of his report, and  
24 I think yesterday we started to go through the list and  
25 had found that it wasn't necessary, but I'll start with

1 the first three or four: A&C Building, American  
2 Express, Brian Hipple, Buckingham Friends School and so  
3 forth as they appear in his report.

4 Q In his report, does Mr. Geisser discuss how it was  
5 he determined that all payments made to these entities  
6 constituted SDE and not business expenses?

7 A No, he doesn't do that in his report.

8 Q Does Mr. Geisser include any explanation as to how  
9 he justifies his assumption that every use of the  
10 business credit card for a period of three years  
11 constituted SDE and was not for a single business  
12 expense?

13 A No, he does not.

14 Q And is this -- and is that problematic?

15 A Certainly. If any of the expenses that he has  
16 listed or contributed to his SDE analysis turn out to be  
17 legitimate business expenses, then they shouldn't appear  
18 there. If that's the case, then they're serving to  
19 inflate his -- his calculation of value.

20 Q And having reviewed Mr. Geisser's report, did you  
21 note whether he considered the existence of a license  
22 agreement between Complete Group and Steel Seal Pro?

23 A His documents considered listing includes it but I  
24 don't think he had it anywhere in his report.

25 Q And what is the effect of that on his opinion?

1       A    It differentiates Steel Seal Pro from SCIX, and that  
2       difference should have been vetted out and considered  
3       because they are not identical companies, but he  
4       essentially uses Steel Seal Pro as a surrogate for SCIX.

5       Q    And the payments to Ms. Moreno, did you note whether  
6       those all were deemed SDE by Mr. Geisser?

7       A    He did.

8       Q    And do you have an opinion as to that decision on  
9       his part?

10      A    Yes.

11      Q    What is that opinion?

12      A    It appears inappropriate because within Ms. Moreno's  
13      deposition, she indicated that she actually worked for  
14      SCIX and later for Steel Seal Pro.

15      Q    And on the bottom line of his number, what effect,  
16      if anything, did his decision to deem all payments to  
17      Melissa Moreno as SDE have on his calculation of SDE?

18      A    It would inflate it.

19      Q    Once Mr. Geisser determined what he calculated as  
20      the average seller's discretionary earnings for these  
21      three -- for those three years, how did he use that  
22      figure to come to his ultimate opinion?

23      A    He ended up developing this -- this factor and then  
24      he applied it to the various discretionary earnings by  
25      year and then he averaged those up to determine his



1 1,750,000.

2 Q Did Mr. Geisser provide an opinion in his report as  
3 to purported value for those businesses of SCIX as a  
4 going concern?

5 A He didn't provide a value in terms of what the  
6 businesses were worth, no.

7 Q And what analysis of the appropriateness of this  
8 particular 2.92 multiplier did Mr. Geisser include in  
9 his report?

10 A He did very little analysis with regard to the  
11 actual components of his SDE calculation in terms of  
12 these -- these ratios that were used.

13 Q Can you explain?

14 A Sure. There are a couple issues going on. He  
15 grabbed four companies from Bizcomps but he doesn't know  
16 what the companies do specifically. He didn't list the  
17 names of the company. He didn't list what the companies  
18 are selling. We also noticed that several of these  
19 companies are kind of pre-recession and he doesn't  
20 explain why a company pre-recession should be used to  
21 value a company post-recession. We don't know how -- go  
22 ahead.

23 Q Is that significant?

24 A Yeah, it -- things are different, and he needs to  
25 vet those out. Typically when we look at the Bizcomps

1 statistics or other database statistics, we need to line  
2 them up. We'll address each one of the entities, say  
3 why it's similar, why it's different, why we're  
4 including it, why we might exclude it, and we might even  
5 adjust it in some way.

6 Q Did Mr. Geisser identify any other multiplier in his  
7 report?

8 A Yes. On Exhibit G of his report where he determines  
9 an SDE factor, the column that appears next to it is  
10 also a ratio. It's called price revenue. That's also a  
11 valuation technique to take a look at what the price  
12 actually of the entity sold for and then -- over  
13 revenue. So what this means is you could use these  
14 factors which looks like sum to the .63 and apply to the  
15 revenue numbers and also get the value for the entity.

16 MR. HIPPLE: So basically what you're saying,  
17 he took the highest value estimate instead of the --

18 THE WITNESS: There are only two values here,  
19 but, yes, it turns out to be a much higher number, and I  
20 believe that's also listed in my report.

21 MR. HIPPLE: So basically he could have done a  
22 0.63, correct?

23 THE WITNESS: Yes. And he would have applied  
24 that against revenue and he would not have even looked  
25 at discretionary earnings and done all the various

1 calculations.

2 BY MR. HIPPLE:

3 (Questions being read by Ms. Ann Lemmo, intern  
4 for Judge Rueter.)

5 Q And what were some of the liabilities of SCIX as of  
6 October 13th, 2010?

7 A Well, we're aware that there were claims not only  
8 from Mr. Hipple and the plaintiff but also that A&C  
9 Consultants I thought had a lien out there.

10 Q And does Mr. Geisser reconcile this with his  
11 reported value of 1.75 million that he ultimately  
12 provides as his opinion?

13 A No, he ignores liabilities.

14 Q And if he -- using a conclusion of value  
15 methodology, could he ignore this discrepancy?

16 A No, he couldn't.

17 Q In performing his calculation of value, did Mr.  
18 Geisser discount his 2012 and 2011 calculated values to  
19 2010 dollars as he determined the averages appearing on  
20 his Exhibit F?

21 A No, he did not.

22 Q And is this problematic?

23 A It is. It's just fundamental that if you're going  
24 to use dollars in the future that you're going to need  
25 to discount them to -- at value for today. So if he's

1 looking at a 2012 dollar, it's not going to be worth the  
2 same thing in 2010. And so he should have discounted  
3 his numbers for 2012 and 2011 at the very least just  
4 conceptually to bring him into 2010 dollars and -- and  
5 he didn't do that.

6 Q What effect, if any, would this have on his ultimate  
7 opinion of \$1.75 million?

8 A It would serve to inflate it.

9 Q In reviewing Mr. Geisser's report and attached  
10 exhibits, can you tell if he took into consideration  
11 inventory acquired in prior periods and sold in 2011?

12 A No, he did not.

13 Q Can you show the Court an example of this?

14 A Sure. If we go to Mr. Geisser's report, Exhibit E-  
15 2, and I believe we started to look at this yesterday,  
16 in E-2, the cost of goods sold on the first page is  
17 \$187,000. And it would not appear that that's a full  
18 year's worth of cost of goods sold.

19 So -- and as Mr. Geisser, I believe, testified  
20 as he went through this yesterday, on page one, there  
21 are lots of revenue numbers over to the right, but there  
22 are no cost of goods sold numbers. Page two, no cost of  
23 goods sold numbers. Page three, there is a cost of  
24 goods sold number but it's for \$127. Page four, again,  
25 revenue numbers, no cost of goods sold. Page five,

1 revenue numbers, no cost of goods sold.

2 Page six, there's a revenue number -- I'm  
3 sorry -- a cost of goods sold number of \$167, and,  
4 again, lots of revenue numbers. Page seven, again, lots  
5 of revenue numbers, no cost of goods sold. Page eight,  
6 lots of revenue numbers, no cost of goods sold. Page  
7 nine, lots of revenue numbers, cost of goods sold of  
8 \$114.

9 It's not until page ten in April that we see a  
10 cost of goods sold for Colonial Chemical of \$17,550. So  
11 you have no inventory coming into this business at least  
12 through these checks until April.

13 So all the sales from January, February and  
14 March are from inventory that's presumably already on  
15 site. And so you've got a lot of revenue numbers and  
16 for the first quarter this thing is extremely  
17 profitable, Your Honor, because there's no cost of goods  
18 sold, there are no appreciable cost of goods sold. And  
19 it --

20 THE COURT: Those costs were incurred prior to  
21 that time, that's the assumption I guess you can make?

22 THE WITNESS: The assumption is that there's  
23 inventory there, and I think Mr. Geisser agreed that  
24 it's getting sold off.

25 THE COURT: It was paid -- it was paid for

1 earlier -- in an earlier year.

2 THE WITNESS: Yes. And that's one of the  
3 problems with this analysis is that it's -- because it's  
4 just a check analysis, you don't know what's already on  
5 the balance sheet. You don't know what's already  
6 inventory. And it's very clear from just looking at  
7 these for the first three months, they didn't buy  
8 anything, but there's lot of revenue numbers here.

9 THE COURT: But couldn't you figure that out  
10 if you just knew the number of units that were sold and  
11 we know the prices of the -- I think someone said it was  
12 \$1.50 per bottle.

13 THE WITNESS: You could back into it.

14 THE COURT: But for what -- I don't know  
15 whether it was a 16-ounce or eight-ounce bottle but --

16 THE WITNESS: Right. I understand that  
17 that's --

18 THE COURT: -- but you could figure it out, I  
19 guess.

20 THE WITNESS: You could figure it out, but  
21 it's not figured out here. I think the analysis is just  
22 strictly with reviewing the checks, and that's what he  
23 saw for the checks. This has a big impact because if  
24 the cost of goods sold, they're only 178 -- I'm sorry --  
25 \$187,000, then you could have more distributions for

1       that period of time because your inventory is already  
2       sitting there.

3               You've already paid for it and now you -- you  
4       have the potential for overstating your distributions  
5       again, because you've -- you've sold inventory you  
6       already had, so, yes, he has more cash. But this is  
7       going to go to his 1.75 million.

8               THE COURT: Okay. Thanks.

9       BY MR. HIPPLE:

10              (Questions being read by Ms. Ann Lemmo, intern  
11       for Judge Rueter.)

12       Q     And what is the effect, if any, of this?

13       A     I think we kind of just ran through that.

14       Q     Okay. In reviewing Mr. Geisser's report, did you  
15       discover any internal inconsistencies or discrepancies  
16       among the exhibits he attaches to his report?

17       A     Yes.

18       Q     Directing your attention to Exhibits B and E-2 of  
19       Mr. Geisser's report, do you agree with me that Exhibit  
20       E-2 is a summary of the 2011 transactions of Steel Seal  
21       Pro according to the records of its account with First  
22       National Bank?

23       A     Yes.

24       Q     According to that particular exhibit, what is the  
25       cost of goods identified?

1 A We did this, 187,000. Okay.

2 Q Now moving to Exhibit B under the column entitled  
3 Steel Seal Pro, LLC, 2011, is there an entry for the  
4 cost of goods sold?

5 A Yes. I'm sorry. We're talking about 2011.

6 MR. HIPPLE: B or D?

7 THE WITNESS: I think we're going to B. On D  
8 -- I'm sorry, on E-2, we have cost of goods sold of  
9 187,682. On B for 2011, cost of goods sold, about five,  
10 six lines down for 2011 is 602,280.

11 BY MR. HIPPLE:

12 (Questions being read by Ms. Ann Lemmo, intern  
13 for Judge Rueter.)

14 Q And do both those entries purport to reflect the  
15 cost of goods sold for Steel Seal Pro in 2011?

16 A Under each of their methodologies, yes.

17 Q Now directing your attention to Exhibit E-2 under  
18 revenues, what is the figure listed for Steel Seal Pro's  
19 total revenue in 2011?

20 A 2011 revenues, 1,153,389.66.

21 Q And now back to Exhibit B attached to Mr. Geisser's  
22 report --

23 A Yes.

24 Q -- according to that document, what were the total  
25 revenues for Steel Seal Pro in 2011?



1 A 1,249,065.

2 Q Sticking with Exhibit E-2 and B, can you take a look  
3 at the expenses for Steel Seal Pro in 2011 according to  
4 Exhibit E-2 and tell the Court what that figure is?

5 A Okay. The expenses for 2011 are 256,414 as  
6 determined by Mr. Geisser.

7 Q And what are the expenses for Steel Seal Pro in 2011  
8 according to Mr. Geisser's Exhibit B?

9 A 518,353.

10 Q And would you consider these three differences  
11 between Mr. Geisser's Exhibit B and E-2 significant  
12 discrepancies?

13 A Yes.

14 Q And does he address any of these discrepancies  
15 anywhere within his report?

16 A No.

17 Q What effect, if any, do these discrepancies have on  
18 Mr. Geisser's calculation of value?

19 A Well, it draws into question how reliable the  
20 numbers are.

21 Q I'd like to direct your attention to Exhibit B to  
22 Mr. Geisser's report and directing your attention to the  
23 column under SCIX, LLC, for the year 2010.

24 A Yes.

25 Q Can you tell the Court what figure represents the

1 gross profit of SCIX for 2010?

2 A Sure. According to this exhibit, \$586,120.

3 Q And what does gross -- gross profit represent?

4 A It's going to be revenues minus cost of goods sold.

5 Q Now going to Exhibit C.

6 A Okay.

7 Q And directing your attention to the figure  
8 representing distributions for SCIX for 2010, what is  
9 that figure?

10 A 558,534.

11 Q And according to Mr. Geisser's report, does that  
12 figure represent the total discretionary spending of  
13 SCIX for 2010 or SDE for that year?

14 A Yes.

15 Q And if we were to take the gross profit for SCIX for  
16 2010 as represented in Exhibit B and subtract the SDE  
17 for SCIX for 2010 as calculated by Mr. Geisser on  
18 Exhibit C, what amount would that leave us?

19 A So we're talking about taking the gross profit for  
20 2010 on Exhibit C, which is 586,000 and subtracting out  
21 the distributions that were determined for 2010 of  
22 558,534, so that's going to leave you a balance of  
23 approximately \$27,000.

24 Q And what would that 2,000 -- sorry, \$27,000  
25 represent?

1       A     That's apparently all that's left to operate the  
2       business for all of 2010, and that means all the  
3       payroll, all the expenses you've seen here, so you've  
4       got -- he's only got gross profit of 586 but  
5       distributions of 558, so that leaves him \$27,000 to  
6       operate the business. And I'll point out something  
7       else, because when you go to E-2, you'll see that Mr.  
8       Geisser determined that expenses are 256,000.

9               MR. BERKOWITZ: Sorry. Was that B-2?

10              THE WITNESS: No, that's E-2.

11              MR. BERKOWITZ: E-2.

12              THE WITNESS: So --

13              THE COURT: How much were the expenses?

14              THE WITNESS: 256,000 is what Mr. Geisser  
15       determined on E-2 for 2011, so apparently when he did  
16       his analysis it cost 256,414. But when you apply his  
17       numbers in 2010, there's only \$20,000 left to operate  
18       the business. I think also on E-3, his expenses are  
19       282,234 for the year. So it doesn't seem reasonable  
20       that you would be able to operate this business for  
21       \$27,000.

22       BY MR. HIPPLE:

23                    (Questions being read by Ms. Ann Lemmo, intern  
24       for Judge Rueter.)

25       Q     And looking at the far left of Exhibit B under the

Mr. Pederson - Direct

100

1 word expenses, are those all the items that SCIX would  
2 have had to pay for expenses with this 2,000 -- \$27,000?

3 A Yes.

4 Q And according to Exhibit B, what is the total  
5 expenses that SCIX incurred in 2010?

6 A 485,251.

7 Q Which left a profit or a loss according to Mr.  
8 Geisser's Exhibit B?

9 A 100,869.

10 MR. HIPPLE: Profit or loss?

11 MR. BERKOWITZ: I'm going to object.

12 THE WITNESS: I believe it says profit --

13 MR. BERKOWITZ: If one of them or the other  
14 can ask the questions.

15 THE COURT: All right. I'll overrule the  
16 objection for now.

17 MR. HIPPLE: Thank you.

18 THE WITNESS: 100,869 appears on Exhibit B.

19 THE COURT: But is it a profit or loss?

20 THE WITNESS: It's a profit.

21 THE COURT: Okay.

22 BY MR. HIPPLE:

23 Q So which is it, did SCIX have only \$100,000 in 2010  
24 to pay an SDE or did SCIX somehow pay for all of its  
25 business expenses with \$27,000?

1 A We don't know the answer to that. It's just an  
2 inconsistency in the report.

3 Q Please turn to Exhibit D of Mr. Geisser's report.

4 THE COURT: Exhibit what?

5 MS. LEMMO: D.

6 THE COURT: Okay.

7 THE WITNESS: All right.

8 BY MR. HIPPLE:

9 (Questions being read by Ms. Ann Lemmo, intern  
10 for Judge Rueter.)

11 Q On the -- on the first line of his exhibit, A&C  
12 Building and Industrial Maintenance, what is the amount  
13 listed under Steel Seal Pro for 2012?

14 A The amount is 160,600.

15 Q And what is the amount listed under 2012 annualized?

16 A 214,133.

17 Q Did you look at this calculation performed by Mr.  
18 Geisser?

19 A Yes, I did.

20 Q What did you find?

21 A I found that Mr. Geisser indicated and he testified  
22 that with Column B, what he's doing is an annualization  
23 determination, and what he does is divide by nine for  
24 the nine months of the year it would represent and  
25 multiply by 12. But what I, in fact, found is that the

1 160,600 that's listed here for 2012 before annualization  
2 includes amounts past September 30. In fact, the  
3 payment was early October for \$40,000.

4 And so what's happened here is he's not  
5 annualized that in the methodology that he described  
6 here, but, instead, he's included amounts in the fourth  
7 quarter even though it was cut off at 9-30. Now, what  
8 this is doing is, it's -- it's getting double counted  
9 because it's already in the 160,600 and then he's  
10 dividing that by nine and multiplying by 12. So his  
11 annualized number is 214,133. But the actual number  
12 should be 160.

13 And what's happening is, the 40 is getting  
14 added in, and then the 40 is getting annualized. So  
15 there's growth in there. And the reason this jumped out  
16 is because in 2011, the amount is 160, and in 2012  
17 through September, if you stuck with the annualization  
18 and only cut -- and cut this off at September 30, the  
19 amount would be 120,000. If you annualize 120,000, in  
20 other words, divide by three and multiply by four, you  
21 get 160,000.

22 So what's happened here is, this annualization  
23 has overstated the amount that's getting paid under the  
24 A&C Building Industrial Maintenance. And so this is  
25 flowing all the way through the schedule and it gets

1 multiplied by 2.92 and has an impact on his  
2 determination of 1.75 million.

3 Q Were you present when Mr. Geisser testified as to  
4 information upon which he based his opinion?

5 A Yes.

6 Q And were you present when Mr. Geisser testified that  
7 he did not have sufficient information for a valuation  
8 engagement?

9 A Yes.

10 Q Given the information available to him, and, in  
11 particular, the 2006 to 2010 tax returns for SCIX's  
12 Schedule C, in your opinion he could have performed a  
13 conclusion of value?

14 A He could have done a lot more. Without having done  
15 the full analysis, I can't really definitively say he  
16 could have done that. But, certainly, he could have  
17 done a lot more.

18 The tax returns are actually a great source of  
19 information, and we actually prefer them in an analysis  
20 because QuickBook files, if they're not being audited,  
21 are sometimes, I won't say questionable, but you always  
22 kind of look at them. But tax returns are signed under  
23 the penalty of perjury, so as valuation guys, we love to  
24 see tax returns. You can do a lot with them.

25 Also we learned yesterday that it's

1 potentially possible that the bank records for SCIX for  
2 2007, '08, '09 were available but they were never  
3 requested. We don't really know -- and Mr. Geisser  
4 apparently never asked for that, so we don't really know  
5 the full -- what's completely behind that. But there  
6 are things that could have been done.

7 Q Would that have been an ideal amount of information  
8 from which to do that?

9 A The tax returns by themselves, no. But there is  
10 also more market data available, so I think there are  
11 other things that could have been done. Also just  
12 looking at the assets, there don't seem to have been a  
13 whole lot of assets in this company anyway, so I don't  
14 know that it would have helped in terms of creating a  
15 value because what he really seems to be looking for is  
16 income related. But you can still take a look at the  
17 historical information and head towards some value that  
18 -- that you could reconcile and try to make sense of.

19 Q In your expert opinion, did Mr. Geisser perform  
20 under a valuation engagement?

21 A No.

22 Q In your expert opinion, did Mr. Geisser determine a  
23 conclusion of value of the assets of SCIX as of October  
24 13th, 2010?

25 A No.



1 Q In your expert opinion, did Mr. Geisser determine a  
2 conclusion of value of SCIX as of October 13th, 2010?

3 A No.

4 Q In your expert opinion, did Mr. Geisser determine a  
5 conclusion of value of 100 percent interest in SCIX as  
6 of October 13th, 2010?

7 A No.

8 Q In your expert opinion, did Mr. Geisser determine a  
9 conclusion of value of anything in accordance with SSVS  
10 Number 1?

11 A No, he didn't perform a conclusion of value.

12 Q In your expert opinion, did Mr. Geisser perform the  
13 requisite work to develop the foundation upon which to  
14 opine as to the fair market value of the assets of SCIX  
15 as of October 13th, 2010?

16 A No, he did not.

17 Q In your expert opinion, did Mr. Geisser perform the  
18 requisite work to develop the foundation upon which to  
19 opine as to the fair market value of a 100 percent  
20 interest in SCIX as of October 13th, 2010?

21 A He did not.

22 Q In your expert opinion, did Mr. Geisser perform the  
23 requisite work to develop the foundation upon which to  
24 opine as to the fair market value of the assets of SCIX  
25 as of October 13th, 2010?

1 A No, he did not.

2 Q In your expert opinion, did Mr. Geisser perform the  
3 requisite work to develop the foundation upon which to  
4 opine as to the fair market value of SCIX as of October  
5 13th, 2010?

6 A No, he did not.

7 Q In your expert opinion, did Mr. Geisser perform the  
8 requisite work to develop the foundation upon which to  
9 opine as to the fair market value of a 100 percent  
10 interest in SCIX as of October 13th, 2010?

11 A No, he did not.

12 Q In your expert opinion, did Mr. Geisser perform the  
13 requisite work to develop the foundation upon which to  
14 opine as to the reasonably equivalent value of the  
15 transfer of SCIX's assets from SCIX to Clement Hipple  
16 which occurred on October 13th, 2010?

17 A No, he did not.

18 Q In your expert opinion, did Mr. Geisser perform the  
19 requisite work to develop the foundation upon which to  
20 opine as to a reasonably equivalent value for any  
21 purported transfer of SCIX -- from SCIX to Clement  
22 Hipple on October 13th, 2010?

23 A No, he did not.

24 Q In your expert opinion, did Mr. Geisser perform the  
25 requisite work to develop the foundation upon which to

1 opine as to a reasonably equivalent value for any  
2 purported transfer of a 100 percent interest in SCIX to  
3 Clement Hipple on October 13th, 2010?

4 A No, he did not.

5 Q Do you have an opinion as to whether Mr. Geisser's  
6 opinion is in accordance with the standard valuation  
7 techniques used in your industry?

8 A No, it is not.

9 Q And have you -- have you offered all of your  
10 statements and opinions today with a reasonable degree  
11 of professional certainty?

12 A Yes.

13 THE COURT: Is that all the written questions?

14 THE WITNESS: Yes, sir.

15 THE COURT: Okay. Mr. Hipple, any questions  
16 other --

17 MR. HIPPLE: Yes.

18 THE COURT: -- than those that were just read?

19 MR. HIPPLE: Yes, I do, Your Honor.

20 BY MR. HIPPLE:

21 Q Okay. Let's go to Mr. Geisser's report, D-31.

22 THE COURT: D-31?

23 MR. HIPPLE: D -- yeah, D-31, David-31.

24 MR. BERKOWITZ: Sorry. Do you have a page  
25 number in your exhibit? I don't have the tabs. He has

1 my tabbed report.

2 THE WITNESS: Do you want this one?

3 MR. BERKOWITZ: Sure.

4 THE WITNESS: Okay.

5 THE COURT: Do you have your own report?

6 THE WITNESS: I'll look for it here.

7 THE COURT: Okay.

8 THE WITNESS: Sorry. It's --

9 MR. BERKOWITZ: And which one are we looking  
10 at?

11 MR. HIPPLE: The report of Mr. Geisser which  
12 starts at D-31, and go to Exhibit A. Do you have it up  
13 there? No, it's the white -- white binders. D as  
14 defendant.

15 THE COURT: What number is it?

16 MR. HIPPLE: D-31.

17 THE COURT: P-31? Thanks. P-31, Mr.  
18 Pederson. I have Exhibit D and what was the number  
19 again? I'm sorry.

20 MR. HIPPLE: Sorry. D-31 --

21 THE COURT: D?

22 MR. HIPPLE: -- Exhibit A.

23 THE COURT: Exhibit A?

24 MR. HIPPLE: D-31, Exhibit A.

25 THE COURT: Oh, okay. I'm sorry. All right.

1 All right. We're with you, I believe.

2 THE WITNESS: Exhibit A, yes.

3 BY MR. HIPPLE:

4 Q Okay. Basically, my question to you is, the actual  
5 years that have been used in this analysis, okay, are  
6 not the standard of what the years would -- would have  
7 been used, is that correct?

8 A That's how I understand Mr. Geisser's report, yes.

9 Q In other words, he should have used different years,  
10 earlier years, in his report?

11 A If I'm understanding you correctly, and normally  
12 when you conduct a fair market value, you take a look at  
13 historical information and not prospective information,  
14 because in theory it wouldn't exist at the time of the  
15 transfer.

16 Q Right. And those -- and those years would have been  
17 available, the bank statements and information for him  
18 to give his opinion on?

19 A As we discussed yesterday, I believe those bank  
20 records would be available, at least for some of the  
21 years.

22 Q Okay. And if you would turn to Exhibit D.

23 MR. BERKOWITZ: I'm sorry. Is that D?

24 MR. HIPPLE: D as in David. I'm sorry.

25 THE WITNESS: I have Exhibit D.

1 BY MR. HIPPLE:

2 Q Okay. And under -- under American Express, okay --

3 A Yes.

4 Q -- if you would go to -- hold on for a minute -- if  
5 you would go to tab 107, 108 and 109 of that and take a  
6 look at that.

7 A Okay. Are we --

8 MR. BERKOWITZ: Are you in plaintiff's  
9 exhibits?

10 MR. HIPPLE: That -- P-107, yes. I'm sorry,  
11 108.

12 (Pause in proceedings.)

13 THE WITNESS: I have 108.

14 BY MR. HIPPLE:

15 Q Okay. And under the name, under detail, Craig Huck  
16 (ph) on the American Express bill --

17 A Yes, that's a few pages back.

18 Q -- could we just -- could we just start looking down  
19 like Yahoo, Google, U.S. Post Office, okay, Google, U.S.  
20 Post Office, Yahoo --

21 A Yes, I see those entries.

22 Q -- Google, U.S. Post Office, U.S. Post Office, U.S.  
23 Post Office, Yahoo, Google -- all the way down?

24 A Yes.

25 Q Okay. National Physician again is also a company

1       that does website work, okay?

2               MR. BERKOWITZ: I'm going to object. If Mr.  
3       Hipple wants to testify, that's fine.

4               THE COURT: Right.

5               MR. BERKOWITZ: This is a witness that did not  
6       include this in his report. I assume he's never seen it  
7       before today, and I would object to him using any  
8       expertise to tell us what anything in this document is.  
9       To the extent that there's underlying records, those  
10      would be business records that weren't produced.

11              And on top of that, Your Honor, I'd like to  
12      point out that right at the top of the page, this is the  
13      card for Scientific Chemical. And we know SCIX is gone.  
14      This is -- this is 2012. We don't even know what  
15      company this could possibly apply to.

16              THE COURT: But didn't Mr. Geisser when he  
17      projected the value of the business go forward to -- one  
18      was Scientific Chemical or -- tell me if I'm wrong.

19              MR. BERKOWITZ: He -- he used forward-going  
20      years, yes, he did.

21              THE COURT: Right, right. All right. I'll  
22      overrule the objection. But don't -- don't -- you're  
23      telling us what various entries are. You can't do that.

24              MR. HIPPLE: Okay.

25              THE COURT: You can ask him questions.

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1 MR. HIPPLE: All right. Then maybe this is  
2 something I --

3 THE COURT: No, but go ahead, you ask him  
4 about --

5 MR. HIPPLE: -- maybe I should save this for  
6 when I testify.

7 THE COURT: -- Yahoo and Google, but once you  
8 started talking about National Physicians, you started  
9 telling us what that was, you really need to ask a  
10 witness that. Okay? So go ahead.

11 MR. HIPPLE: All right.

12 BY MR. HIPPLE:

13 Q Well, then that -- another familiar name is Verizon,  
14 okay?

15 THE COURT: What's your question?

16 MR. HIPPLE: The question is that they're  
17 saying that in the report that these are not business  
18 expenses, okay? And, basically, all the names that I  
19 have mentioned on this page are certainly business  
20 expense through my experience --

21 THE COURT: Do you agree with that, Mr.  
22 Pederson? I think that's the question. Do they appear  
23 to be business expenses?

24 THE WITNESS: Your Honor, it's difficult for  
25 me to tell --



1 MR. HIPPLE: Yeah.

2 THE WITNESS: -- if they're business expenses  
3 or not, but it would have the pattern of a business  
4 expense.

5 THE COURT: Okay.

6 BY MR. HIPPLE:

7 Q All right. And, again, those -- those last three  
8 years are all similar, okay. And, again, the point I'm  
9 trying to make is that these were all excluded from  
10 business expenses, and that goes throughout all the  
11 American Expresses. If you would look at all of them,  
12 you will find these different names that are business  
13 expenses.

14 MR. HIPPLE: But I could testify to that  
15 myself also, Your Honor.

16 THE COURT: All right.

17 MR. HIPPLE: Because I have familiarity when I  
18 took over, okay, after my son --

19 THE COURT: Right.

20 MR. HIPPLE: -- Brian passed away so I know,  
21 again, similar, he always used the same companies,  
22 Google, so I can testify to that on my own.

23 MR. BERKOWITZ: My objection may be a little  
24 late, but Mr. Geisser's testimony was there was no way  
25 of knowing whose business expenses were being paid

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1 through this account, there's no business records, even  
2 going forward for the ones Mr. Hipple is going to  
3 testify to, those records weren't produced.

4 THE COURT: But did Geisser have these  
5 American Express records?

6 MR. BERKOWITZ: Yes. Yes.

7 THE COURT: Okay. But I think the point Mr.  
8 Hipple is making is that some of these entries on the  
9 American Express records show legitimate business  
10 expenses, and I think what he's suggesting is Mr.  
11 Geisser, in calculating the -- the expenses, didn't  
12 include these. Is that your point?

13 MR. HIPPLE: Yes. My point is he put  
14 everything as if it was not a business expense.

15 THE COURT: Not -- not a legitimate expense?

16 MR. BERKOWITZ: Correct. And he testified  
17 that he didn't have any business records to know which  
18 business to charge. There are expenses that look like  
19 business expenses.

20 THE COURT: Oh, but he couldn't verify it?  
21 Couldn't verify it? He couldn't tell which --

22 MR. BERKOWITZ: Yes. There was no -- there  
23 were no underlying records.

24 THE COURT: All right. Okay.

25 MR. HIPPLE: Okay. When I get up on --

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1 THE COURT: You could explain that.

2 MR. HIPPLE: -- then I'll testify. I'll  
3 explain that. Okay.

4 THE COURT: Okay.

5 BY MR. HIPPLE:

6 Q In the same area, okay, which she testified, Melissa  
7 Marone (sic), yeah, Marone, okay, that she did work for  
8 SCIX and then Steel Seal Pro. But that -- I don't think  
9 that was taken into consideration here.

10 A I noted in my report that in her deposition that she  
11 indicated that she had worked for SCIX and subsequently  
12 worked for Steel Seal Pro.

13 Q All right.

14 A I don't know what she testified to. I wasn't here  
15 when she testified.

16 Q And also as far as the \$64,000 to Clement Hipple  
17 would have been royalties, okay, on tax returns of 2009  
18 and 2010, they were royalties.

19 MR. BERKOWITZ: Object, Your Honor. There's  
20 been no discussion of royalties.

21 MR. HIPPLE: That's right. This is --

22 MR. BERKOWITZ: There's been no discussion of  
23 tax returns.

24 MR. HIPPLE: -- these aren't questions for  
25 him. These are questions for myself.

1 THE COURT: Right.

2 MR. HIPPLE: All right. Disregard that. Let  
3 me go someplace else. They're not his questions. Okay.  
4 This is his question, okay?

5 BY MR. HIPPLE:

6 Q Again, I would like for you to go back to Exhibit G  
7 as in George --

8 MR. BERKOWITZ: Is this in Mr. Geisser's  
9 report?

10 MR. HIPPLE: Yes.

11 THE WITNESS: I have Exhibit G.

12 BY MR. HIPPLE:

13 Q Yeah. And I just want to bring up again exactly  
14 what you talked about that -- that there are different  
15 factors to base a percentage on when you're putting a  
16 value on the business, anywheres from .693 to 2.92,  
17 okay.

18 A Well, actually, to clarify, these are multipliers.

19 Q Multipliers, that's what I meant, multipliers.

20 A And so they're multiplied against different values.  
21 This 2.92 would be applied to discretionary earnings.

22 Q Right.

23 A The first one at .693 would be applied against  
24 revenues.

25 Q Revenues, okay. And was that done in this case?

1 A The revenues, no.

2 Q Oh, okay. All right.

3 MR. HIPPLE: Now, Your Honor, I have an  
4 exhibit here, okay, and it -- let me see how I can  
5 explain it. It's an exhibit that has Plaintiff's 26,  
6 Plaintiff's 27, Plaintiff's 28, everything on this  
7 exhibit is in these books, okay?

8 THE COURT: Okay. It's a summary or  
9 calculation?

10 MR. HIPPLE: It's a summary, yes, Your Honor.

11 THE COURT: Why don't you show it to Mr.  
12 Berkowitz. Is this something that you prepared or -- or  
13 who prepared it?

14 MR. HIPPLE: I prepared it, Your Honor.

15 MR. BERKOWITZ: It's listed as Defense Exhibit  
16 501, and Mr. Hipple prepared it. I have no idea what it  
17 is. I've never seen it before. It was never included  
18 in the list of exhibits. I don't know that --

19 THE COURT: It's not in the --

20 MR. BERKOWITZ: -- this witness can  
21 authenticate this, tell us what this is.

22 MR. HIPPLE: No, I'm not asking him to  
23 authenticate them. I'm asking just to put this in the  
24 record.

25 MR. BERKOWITZ: I'm going to object to putting

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1 anything in the record that you have no idea what it is.

2 MR. HIPPLE: Well, you do. It's all -- it's  
3 all our exhibits in the record.

4 THE COURT: Okay. Let me stop. That  
5 document, is that included in the defendants' exhibits?

6 MR. HIPPLE: Every one of them exists.

7 THE COURT: No, but the summary, it's a  
8 summary?

9 MR. HIPPLE: Oh, the summary isn't, but it --  
10 it's every one of their -- every one of the plaintiff's  
11 documentation, P-26, P-27, P-28, P-29, okay? And then  
12 it goes on to P-31.

13 THE COURT: All right. Mr. Hipple, the best  
14 way to do that would be not through this witness because  
15 he didn't prepare it.

16 MR. HIPPLE: Oh, no. Okay. I'm not doing it  
17 with his witness.

18 THE COURT: Okay.

19 MR. HIPPLE: I'm just trying to get it in.

20 THE COURT: So if you want to -- if you want  
21 to take the stand and attempt to introduce it, there  
22 might be an objection, but at least you could say this  
23 is how I prepared it. These are the records I used to  
24 prepare it. This is my summary and this is what it  
25 shows.

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1 We'll hear if Mr. Berkowitz has an objection.  
2 But if Mr. Pederson had nothing to do with it, it's --  
3 it's not proper to use this.

4 MR. HIPPLE: Okay. So it's something I should  
5 just try to introduce --

6 THE COURT: Right.

7 MR. HIPPLE: -- on my own.

8 THE COURT: Right.

9 MR. HIPPLE: Right, later.

10 THE COURT: Right.

11 MR. HIPPLE: Okay.

12 THE COURT: Do you have anything else of Mr.  
13 Pederson?

14 MR. HIPPLE: Yes, I do. I have a few more  
15 things, okay?

16 BY MR. HIPPLE:

17 Q All right. In reference to -- let's go to the --  
18 now, this is under defendant. 20 -- D -- David-20,  
19 David-21 and David-22.

20 A I have D-20.

21 Q Yes. And I believe I heard you say, and I believe I  
22 heard Mr. Geisser say that -- that the -- that there  
23 were three patents and that there was a value to the  
24 three patents, correct? Or Mr. Geisser made a statement  
25 that there was a value to the three patents?

1 MR. BERKOWITZ: I'm going to object to the  
2 characterization of Mr. Geisser's testimony. It was  
3 what it was --

4 THE COURT: All right.

5 MR. BERKOWITZ: -- and Mr. Pederson was here.

6 THE COURT: Do you recall Mr. Geisser saying  
7 anything of that sort?

8 THE WITNESS: Mr. Geisser indicated that he  
9 was aware of patents in his report. He called it a  
10 unique patented product.

11 BY MR. HIPPLE:

12 Q Right.

13 A And elsewhere I thought he also called it a patented  
14 product.

15 Q And a unique patented product?

16 A Yeah.

17 Q In other words, very unique --

18 A In one case he did say unique patented --

19 Q -- on its own? Correct.

20 A That's what's in his report.

21 Q Okay. All right. Let's look at the -- we'll go to  
22 D-20 first, okay?

23 A Yes.

24 Q All right. United States patent, dated December 12,  
25 2000, okay?



1 A Yes.

2 Q Now, this patent itself says -- below that it says,  
3 "Seal -- sealer system for combustion engines and the  
4 like," okay?

5 A Yes.

6 Q Now, this patent basically is the chemical formula  
7 patent.

8 MR. BERKOWITZ: Objection, Your Honor. I  
9 object to Mr. Hipple testifying as to what the patent  
10 is. It is what it is.

11 MR. HIPPLE: Okay. Well, I'm -- I'm  
12 testifying what it says.

13 THE COURT: I'll overrule the objection. You  
14 may proceed.

15 MR. HIPPLE: Okay.

16 BY MR. HIPPLE:

17 Q And, basically, this is the chemical formula patent  
18 which has lapsed and is in the public domain?

19 A Yes.

20 Q Okay. All right. The next exhibit, 21, okay, dated  
21 December 4th, 2001. Method of repairing an engine  
22 cooling system, okay. Now, this patent is the original  
23 method and Robert Barks is the inventor on this, okay?  
24 And this is how the repair was supposed to be done,  
25 okay?

1 A Right.

2 Q Now, this patent has lapsed and is also in the  
3 public domain --

4 A Yes, that's what my research showed.

5 Q -- is that right? That's what's I was getting at.

6 Now, the next patent, okay, on page 20 -- D-  
7 22, dated November 18th, 2003, later on --

8 A Yes.

9 Q -- and we spoke about this patent before, repairing  
10 an engine cooling system. And if you look down below,  
11 I'm part of the inventor on this patent, okay, myself  
12 and Robert Barks. Okay. And what this is, this is  
13 actually a patent, how to repair the cooling system,  
14 okay, with one exception that it -- it has additional  
15 language in there to deal with a back pressure problem  
16 by removing the sparkplug, okay? And by the way, in  
17 reference to that, and this is my knowledge, everybody  
18 copied it when it went on the Internet --

19 A Right.

20 Q -- okay, all the other companies. All right. So  
21 basically this is the patent that is still in force,  
22 okay. So my point is, is that Mr. Geisser thought that  
23 there were three good patents out there --

24 MR. BERKOWITZ: I'm going to object. If  
25 there's a question for the witness, I'll --

1 MR. HIPPLE: Okay. Yeah.

2 MR. BERKOWITZ: -- I'd like to hear it, but I  
3 don't think it's proper for --

4 MR. HIPPLE: All right. I keep forgetting  
5 that part. All right. Okay.

6 THE COURT: All right. He's going to ask a  
7 question. Go ahead.

8 BY MR. HIPPLE:

9 Q My question to you is that under Mr. Geisser's  
10 statement, he projected that there were three good  
11 patents out there.

12 A I don't know, and he wasn't clear in his testimony  
13 whether or not there were three, but in his documents  
14 relied upon listing, he did have the patent word plural,  
15 patents, and he did indicate --

16 Q I'm sorry?

17 A Patents. But I don't know that he said that he had  
18 three, but it seemed to be more than one. Although,  
19 again, in his report, I thought he said unique patent,  
20 so I have to go back and take a look whether or not that  
21 was singular or plural, but clearly he was thinking of a  
22 patent in terms of his calculation of value.

23 MR. BERKOWITZ: Object to -- discussion of  
24 what Mr. Geisser was thinking.

25 THE COURT: I'll overrule the objection.

1 That's his understanding of his report, his testimony,  
2 is that right?

3 THE WITNESS: Yes, sir.

4 THE COURT: Okay.

5 BY MR. HIPPLE:

6 Q But he did -- he did mention, and I -- I'm almost  
7 positive, I heard him very clearly mention that -- that  
8 these patents were unique, okay, and that they were, I  
9 guess, valuable and unique. Do you remember him saying  
10 that part?

11 A He indicated that it was a unique patented  
12 product --

13 Q Okay.

14 A -- and he did indicate that this had value and  
15 certainly he talked about the high profit margin on the  
16 product.

17 Q All right. So -- and, again, the -- Mr. Geisser  
18 never did any investigation as far as the -- the website  
19 is concerned, is that correct, in his report?

20 MR. BERKOWITZ: I object, Your Honor. This is  
21 not something within this witness' expertise. We all  
22 sat through the testimony. Mr. Geisser said what he  
23 said. For this witness to come back and try and repeat  
24 for us what Mr. Geisser testified I don't believe is --

25 MR. HIPPLE: I'll rephrase the question.

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1 THE COURT: Well, he did -- Mr. Pederson is --  
2 his testimony is a critique of Mr. Geisser's report, and  
3 I believe one of his critiques is that the website was  
4 owned by another company, et cetera, et cetera. So I'm  
5 going to allow him to testify. Go ahead.

6 Do you understand the question?

7 THE WITNESS: No. Could you repeat it,  
8 please?

9 BY MR. HIPPLE:

10 Q Okay. Mr. Geisser never put a value or never knew  
11 that the website did not belong to SCIX in his report?

12 A He doesn't disclose that anywhere in his report, no.

13 Q And, therefore, he could not have put a value on it,  
14 correct?

15 A He didn't put a value on it specifically. He  
16 included it in his seller's discretionary earnings  
17 because this was part of the whole business process. So  
18 it's kind of inane in the numbers. So the assumption is  
19 that it has its own website and it belongs to SCIX,  
20 because he uses it in calculating his 1.75 million.

21 Q Also as far as the chemical formula, all right, did  
22 he take that into consideration in his report?

23 A I'm not sure I understand the question.

24 Q Okay. The Steel Seal chemical -- secret chemical  
25 formula --

1 A Yes.

2 Q -- did he identify that, value it or mention it at  
3 all in his report?

4 A Not other than indicate that it was a unique  
5 patented product.

6 MR. BERKOWITZ: Object, Your Honor. That is  
7 just not what Mr. Geisser testified, and if I could  
8 remind you, Mr. Geisser gave the example of Coca Cola  
9 being a non-patented product based on a secret formula  
10 with significant value.

11 THE COURT: All right. Hold on. I mean, it's  
12 my recollection of what the testimony is, so I'll -- you  
13 know, I'll go through and recollect to my best ability  
14 what the testimony was. I'm not accepting necessarily  
15 what one witness recollects or what Mr. -- what you  
16 represent -- you recollect or Mr. Hipple recollects. So  
17 I'll overrule the objection. Go ahead.

18 MR. HIPPLE: Yeah. And I think Mr. Geisser  
19 used Kentucky Fried Chicken.

20 MR. BERKOWITZ: I stand corrected if it wasn't  
21 Coca Cola.

22 MR. HIPPLE: All right. I think he used  
23 Kentucky Fried Chicken.

24 MR. BERKOWITZ: I thought it was Coca Cola,  
25 but I could be wrong.

1 THE COURT: Somebody used Coca Cola.

2 BY MR. HIPPLE:

3 Q Okay. From -- from an expert in reference to  
4 companies that have unique products, okay, chemical  
5 formulas and websites and are operating without the  
6 ownership of those entities, okay, how can the --  
7 shouldn't that be something that should be taken into  
8 consideration when you're doing a valuation?

9 A It would be because normally a company would pay for  
10 a website, either to start it up or whether there would  
11 be an ongoing fee associated with it. Likewise, if  
12 there's a unique product that they have to license,  
13 there would be a fee associated with that. And, again,  
14 that would be a company expense.

15 Q Okay. As far as a company that has the use by  
16 paying royalty fees for a website and -- and using the  
17 chemical formula that they no longer have a patent on,  
18 okay, and it's under a different company name anyway  
19 belonging to someone else, for instance, in our case,  
20 five years ago I could have went and said okay, I want  
21 my website back, I want my -- you no longer can use my  
22 chemical formula. What would the value of that company  
23 be if something like that took place in your opinion?

24 A I think what you're asking is, how this impacts an  
25 SDE calculation, and if this business had to function

1 going forward, it would need to pay a royalty or  
2 licensing fee, and that would be a deduction to the  
3 business. So there would be less in the way of the  
4 seller's discretionary income. Likewise, just as you  
5 would have to pay rent on a building, you have to pay  
6 rent on a website, that would be a deduction and  
7 certainly less available for seller's discretionary  
8 earnings.

9 Q Now, let me take that question a little further. My  
10 question to you was, I -- or the person that owned the  
11 website and the manufacturing of the formula said to you  
12 -- said to SCIX five years ago, you can no longer use  
13 it. What would the value of that company be?

14 A Well, certainly the value of the company would  
15 decline.

16 Q Massive -- massive decline, would you say?

17 A Yes, correct.

18 Q Put him out of business almost?

19 A Yes.

20 Q Okay.

21 MR. HIPPLE: No further questions, Your Honor.

22 THE COURT: Yes. Thank you. Yes, Mr.  
23 Berkowitz.

24 MR. BERKOWITZ: Let me bring my -- a lot of  
25 information to bring up here. There's a note pad up



1 here, Mr. Hipple. I don't know if it's -- I believe  
2 it's yours. It looks --

3 MR. HIPPLE: You're reading my notes now.

4 MR. BERKOWITZ: -- it looks like your  
5 handwriting. My handwriting is as bad as yours, so I  
6 can read it.

7 MR. HIPPLE: That's what I was looking for a  
8 minute ago.

9 CROSS-EXAMINATION

10 BY MR. BERKOWITZ:

11 Q Mr. Pederson, you're aware that the business of SCIX  
12 was the sale of a product called Steel Seal?

13 A Yes, I'm aware of that.

14 Q And the sale of this product, Steel Seal, generated  
15 all the profits?

16 A I believe that's true.

17 Q And all the income?

18 A Yes.

19 Q And all the money that was taken out by Mr. Hipple  
20 and everybody else that we've seen?

21 A I'm not aware of any other product that they were  
22 selling.

23 Q Okay. So Steel Seal, the product, you would agree  
24 with me has a value?

25 A The product? Yes.

1 Q Okay. And you can value that product, can't you?

2 MR. HIPPLE: Objection, Your Honor.

3 THE COURT: Overruled.

4 THE WITNESS: When we talk about valuing a  
5 product, are you talking about its cost or are we going  
6 to talk about its retail value?

7 BY MR. BERKOWITZ:

8 Q I'm talking about the cash flow that that product  
9 generates.

10 A All right. So you're going to need some assumptions  
11 as to what this product sells for --

12 Q But you --

13 A -- and how you're going to sell it.

14 Q -- but you can generate -- you can create and  
15 calculate a value for the Steel Seal product based on  
16 the amount of money the owners get to take out of the  
17 business --

18 MR. HIPPLE: Objection to the word owner.

19 MR. BERKOWITZ: -- from solely the sale of  
20 that product?

21 THE WITNESS: No, I disagree.

22 THE COURT: What's the objection?

23 MR. HIPPLE: To the word owners.

24 THE COURT: All right. Overruled. Go ahead,

25 Mr. --

1 THE WITNESS: No, I would disagree. If the  
2 company is borrowing money, then that's potentially cash  
3 that's available to take out of the business, and it has  
4 nothing to do with sales.

5 BY MR. BERKOWITZ:

6 Q I'm talking about only the money that goes to the  
7 owners. Forget all the business expenses.

8 A I don't know where the owner -- the money is --

9 Q It all is generated from the sale of Steel Seal,  
10 right?

11 A In this hypothetical we're talking about there, all  
12 we're talking about is the income related to it, and  
13 there's no other source of cash.

14 Q No. Yes. The only income that comes into this  
15 company is from the sale of the product, Steel Seal.

16 A Okay. I'm sorry, I have to stop you again. I said  
17 something different. I said the only source of cash.

18 Q I'm asking you my questions not what you talked  
19 about.

20 A I don't understand your question.

21 Q Okay. There's a product called Steel Seal. You'll  
22 agree with me on that?

23 A Yes.

24 Q And that product generates revenue from its sale on  
25 the Internet?

1 A And to the U.K., yes.

2 Q It -- okay.

3 A From wherever it comes from --

4 Q Okay, wherever it comes from --

5 A -- but we're just being very clear.

6 Q -- if it comes from outer space, it generates income  
7 in U.S. dollars that are reflected for the company?

8 A Yes.

9 Q And then the company pays all its business expenses,  
10 right, out of that money that comes in?

11 A There you go again. They could be borrowing  
12 money --

13 Q I'm not talking about borrowing money.

14 A -- to pay their expenses.

15 Q I'm talking about business expenses. Phone -- you  
16 talked about a phone record.

17 A You could use --

18 Q You talked about the product -- excuse me, let me  
19 ask my question.

20 A Certainly.

21 Q You talked about the acquisition cost of the product  
22 from Colonial Chemical. You talked about all the other  
23 expenses that a business has. I'll put them all in that  
24 universe, expenses, okay? You've got the revenue  
25 generated from the sale of Steel Seal on the Internet,

1 and then you have all the whole universe of expenses.

2 And then you have the leftover money that all goes to  
3 the owners, okay? Are you on the same place now?

4 A I understand your question and your statement.

5 Q Okay.

6 A You're right, there's no question pending. I  
7 understand your statement.

8 Q And there is a value to the owners of the right to  
9 sell that Steel Seal, correct?

10 A There's a value to the owners to sell the Steel Seal  
11 product? Yes, there's going to be a value to the  
12 owners.

13 Q Okay. And the value to the owners is the amount of  
14 cash they get out of it.

15 A When we're doing an earnings approach --

16 Q Oh, no, no, no.

17 A -- or an income approach? Yes.

18 Q I'm not talking about an earnings approach. I'm  
19 saying -- and I'm not asking you to define what that is.  
20 There's a value to the owners?

21 A In its continuing sales, there would be some value,  
22 yes.

23 Q Okay. And the value to the owners has a  
24 relationship to the amount of profit they get out of the  
25 business, not profit in the technical sense, the amount

1 of cash they put in their pocket?

2 A With regard to the sale of the product, yes.

3 Q Okay. So that the product, Steel Seal, has a value,  
4 and it generates money that comes to the pocket of the  
5 owners?

6 A It has that potential, yes.

7 Q It has the potential. And the owners get that  
8 money, they put it in their pocket, and they're pretty  
9 happy?

10 A They may be happy; they may be unhappy. I don't  
11 know.

12 Q Okay. Okay. If it's a lot of money, they're very  
13 happy.

14 A I would agree, they probably would be.

15 Q Okay. So if they pay 89.95 -- if they sell the  
16 product for 89.95 on the Internet and they pay \$1.50 a  
17 bottle for it, and they put a lot of money in their  
18 pockets --

19 MR. HIPPLE: Objection, Your Honor.

20 MR. BERKOWITZ: -- they're happy?

21 THE COURT: Overruled.

22 THE WITNESS: We haven't described it, the  
23 expense structure, but if there's money left over after  
24 the expenses, you're right, they're probably happy.

25 BY MR. BERKOWITZ:

1 Q Okay. And there's a value to them?

2 A Yes.

3 Q Okay. Now, you heard Mr. Hipple testify that he  
4 spent \$2 million to get this right to Steel Seal, right?

5 A No, I wasn't involved with that testimony.

6 Q Okay. You weren't here for that? Okay. That's  
7 fine. You saw -- I believe you heard yesterday that the  
8 name, Steel Seal, has a value, correct?

9 A I don't think we valued the name of Steel Seal.

10 Q Well, you saw that Steel Seal spent money and hired  
11 a lawyer -- I'm sorry, BBB Management, the current  
12 company that has it, spent money and registered a  
13 trademark?

14 A I'm not aware of that.

15 Q Okay. I'll be glad to show you the exhibit, unless  
16 you want to accept the representation that there is a  
17 trademark that BBB Management has?

18 THE COURT: Can we agree to that, Mr. Hipple?

19 MR. HIPPLE: Agree to what, Your Honor?

20 THE COURT: That there's a trademark for Steel  
21 Seal.

22 MR. HIPPLE: Yeah, except that Mr. Hipple  
23 didn't spend any money for the trademark. It gets done  
24 automatically, I believe, Your Honor.

25 THE COURT: All right.

1 THE WITNESS: Sure. Okay. BBB has a  
2 trademark.

3 THE COURT: A trademark, right.

4 MR. HIPPLE: Steel Seal trademark.

5 THE WITNESS: A Steel Seal trademark.

6 BY MR. BERKOWITZ:

7 Q And -- and I'm going to just show you -- it's  
8 Exhibit P-200 --

9 THE COURT: Right.

10 BY MR. BERKOWITZ:

11 Q -- can you see that? I'm going to you, attorney of  
12 record, John A. Gibbons?

13 A I don't know Mr. Gibbons.

14 Q I'm not asking if you know him. Do you see that  
15 right there on the record?

16 A I do.

17 Q Okay. And the attorneys you work with, they  
18 generally get paid for what they do?

19 A Some do, some don't.

20 Q Okay. And you would agree with me, sir, that assets  
21 can be intangible?

22 A Absolutely.

23 Q And you can't pick them up and put them in your  
24 pocket and take them with you in your car, right?

25 A I think you mean they are intangible, yes.



1 Q No, I'm saying you can't pick them up, they're  
2 intangible. I guess that's right.

3 A Okay.

4 Q Right?

5 A That's correct.

6 Q Okay. Now, let's talk about liabilities. You  
7 talked about liabilities and that Mr. Geisser didn't  
8 take account of liabilities in his report, correct?

9 A That's correct.

10 Q Okay. And you heard Mr. Geisser testify that he did  
11 not have a balance sheet, he did not have an income  
12 statement nor did he have a statement of cash flow from  
13 these businesses?

14 A He indicated that he had no financial statements,  
15 yes.

16 Q Okay. So he didn't have that information to use in  
17 his report?

18 A Yes. That's what he testified to.

19 Q Because it wasn't produced by the defendants?

20 A I don't know if it -- I wasn't involved with  
21 discovery.

22 Q I didn't ask you if you were involved.

23 A Okay.

24 Q I asked you if you were listening. And you -- you  
25 used the term --

1 MR. HIPPLE: I'm sorry. Could you rephrase  
2 it.

3 BY MR. BERKOWITZ:

4 Q -- in your testimony, book value?

5 A Yes.

6 Q And book value comes from the books and records of  
7 the company, doesn't it?

8 A It does.

9 Q Okay. And you talked about a conclusion of value.

10 MR. BERKOWITZ: I want to make sure I get the  
11 terms correct, Your Honor.

12 BY MR. BERKOWITZ:

13 Q A conclusion of value?

14 A Yes.

15 Q And that's an extensive engagement?

16 A It's a standard valuation engagement.

17 Q It's an extensive engagement?

18 A It can be extensive, yes. It depends on the subject  
19 matter.

20 Q And you have to have -- in order to do a conclusion  
21 of value, you're required to have certain records?

22 A There are not a set -- set of records that you're  
23 required to have.

24 Q You would need the books and records of the company,  
25 wouldn't you?

1 A You don't need all the books and records of the  
2 company, no.

3 Q I didn't say all the books and records. You need  
4 books and records of the company?

5 A You can form a valuation with a set of audited  
6 financial statements.

7 Q Audited financial statements?

8 A Yes.

9 Q Okay. I consider that books and records. I'm sorry  
10 if I did not --

11 A Well, when you say books and records --

12 Q -- speak properly technically.

13 A -- I'm thinking transaction reports, general  
14 ledgers, a lot of data that's not necessary.

15 Q Okay. But you -- you talked about audited financial  
16 statements?

17 A Yes.

18 Q Okay. That's something you can use in a conclusion  
19 of value?

20 A Yes, you would use that.

21 Q And if you don't have that, you're now missing  
22 something that you might need for a conclusion of value?

23 A You might, but you could also disclose that some of  
24 these records aren't available and try some alternate  
25 means.

1 Q Okay. Give -- give me some idea of some alternate  
2 means.

3 A Sure. You can go into the marketplace and see who  
4 else is selling products to the automotive world. In  
5 fact, I did that and I found that there are other  
6 companies out there doing a product --

7 Q Okay.

8 A -- like Steel Seal.

9 Q Okay.

10 A You can get information on those companies and kind  
11 of see how they're doing.

12 Q Okay.

13 A You can also -- you can back into a balance sheet  
14 and you can take a look at what assets they had at the  
15 time.

16 Q So you can back into a balance sheet?

17 A You can attempt it.

18 Q Which means you need records to back into it, right?

19 A You need some records, yes.

20 Q You need underlying records to reconstruct?

21 A You need some records, absolutely.

22 Q And you know that those records were requested in  
23 this case. You heard there was -- a subpoena was  
24 delivered to their accountant to produce -- and these --  
25 this was by the defendant. He produced nothing,

1       notwithstanding that he produced less than nothing for  
2       me. You've got to get the records somewhere, right?

3       A    You do have to get the records somewhere.

4       Q    Okay.

5       A    There were records here, though, and Mr. Geisser had  
6       them for 2011, 2012. He could have worked with those  
7       records and actually gone a little bit backwards.

8       Q    Okay.

9       A    He also had tax returns.

10      Q    Now, a calculation of value is what Mr. Geisser  
11      testified that he performed?

12      A    Yes.

13      Q    And that's a limited -- a limited valuation?

14      A    Yes.

15      Q    And it's approved by the AICPA?

16      A    As a limited valuation technique, yes.

17      Q    Yes. Okay. And Mr. -- okay. Now, you talked a bit  
18      about patents.

19      A    Yes.

20      Q    You said they expired. You talked about the patents  
21      having expired?

22      A    Yes.

23      Q    Yes?

24      A    Yes.

25      Q    Have you read Judge Baldi's order in the Bucks

1 County case where SCIX was ordered to reinstate the  
2 patent that was in front of him at the time, and they,  
3 in fact, reinstated that patent? Had you read the  
4 order?

5 A No.

6 Q Okay. So you didn't know the patent was reinstated?

7 A Which patent? There are three.

8 Q You didn't know that one of the patents was  
9 reinstated?

10 A I knew one of the patents was still valid.

11 Q Okay. It was reinstated at the insistence of Judge  
12 Baldi.

13 A So the other two are still invalid and the one --

14 Q And do you know there's a motion pending with Judge  
15 Baldi to reinstate those two patents in the Bucks County  
16 case that had to be stopped?

17 A No, I wasn't aware of that.

18 Q Okay. Thank you. Now --

19 THE COURT: When you say reinstate, what do  
20 you mean by that?

21 MR. BERKOWITZ: They went in and Judge Baldi  
22 required SCIX, which was the owner of the patent, to  
23 reinstate the patent that expired.

24 THE COURT: You mean reinstate with the Patent  
25 Office?

1 MR. BERKOWITZ: Yes. And they did.

2 MR. HIPPLE: Your Honor, I object, because I  
3 don't see any documentation that states that here today  
4 in the courtroom.

5 THE COURT: All right. Well, I think it's an  
6 exhibit, right?

7 MR. BERKOWITZ: Judge Baldi's opinion is in --  
8 in front of the Court.

9 MR. HIPPLE: It is my opinion and my  
10 understanding that it never got reinstated.

11 THE WITNESS: Your Honor, I'll also interject  
12 that this is all subsequent information.

13 MR. BERKOWITZ: I'm going to object to the  
14 witness testifying.

15 THE COURT: All right.

16 MR. BERKOWITZ: There's no question before the  
17 witness.

18 MR. HIPPLE: Well, first, I'm not done. It's  
19 also my understanding that the patents never got --  
20 what's the word -- put back in --

21 THE COURT: Reinstated.

22 MR. HIPPLE: -- reinstated because of the fees  
23 and also because of the Patent Office would refuse --  
24 because you have to have a special, special  
25 circumstances. It's very hard to reinstate a patent.

1 THE COURT: All right. Well, I'll look at  
2 this.

3 MR. BERKOWITZ: You'll be able to see Judge  
4 Baldi's order.

5 THE COURT: Right.

6 BY MR. BERKOWITZ:

7 Q Now, you -- you would agree with me that a secret  
8 formula has value?

9 A It could.

10 Q Okay. Coca Cola has a secret formula, right?

11 A I believe they do.

12 Q Right? And they generate a whole lot of money,  
13 don't they?

14 A I think they do.

15 Q And nobody's been able to copy their product, have  
16 they?

17 A They've tried.

18 Q Okay. And the same with Kentucky Fried Chicken,  
19 they've got a secret formula, right?

20 A They do. I'm familiar with it.

21 Q So -- so am I -- but, yes.

22 A Yes.

23 Q And there's -- there's a lot of value to a secret  
24 formula?

25 A There can be.



1 Q Yes, and it could be more than a patent, because you  
2 don't have to lay out what's out there, right? Nobody  
3 has to know what's in the secret formula.

4 A I suppose --

5 Q It's secret, right?

6 A -- it could.

7 Q Okay. Now, you -- you talked about the fact that  
8 there was a confidentiality agreement. You saw  
9 testimony about a confidentiality agreement?

10 A Yes, that's right.

11 Q Okay. And that pertained to the formula, and if you  
12 would like to look at it, we can -- it's in Exhibit 37,  
13 Plaintiffs' Exhibit 37.

14 A I may have it.

15 MR. HIPPLE: One moment, please. 37?

16 MR. BERKOWITZ: It's in 37. I'm just looking  
17 for the page because I know --

18 MR. HIPPLE: Of Defendants' 37, right?

19 MR. BERKOWITZ: No, Plaintiffs' -- here we go.

20 THE WITNESS: No, this is Plaintiffs' 37.

21 MR. HIPPLE: Plaintiffs' 37?

22 MR. BERKOWITZ: Read the bottom number.

23 THE WITNESS: The Bates number, H --

24 MR. HIPPLE: I'm sorry. I'm lost.

25 THE COURT: P-37, the white book. P-37.

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1 THE WITNESS: The Bates number, Hipple-00453.

2 MR. HIPPLE: Well, P-37 to me is an

3 application for --

4 THE COURT: What number is it?

5 MR. BERKOWITZ: There's many pages. It's P-

6 37. He just read off the Bates number at the bottom.

7 THE WITNESS: 00453.

8 MR. BERKOWITZ: We've seen this before.

9 THE WITNESS: It's probably six pages back,  
10 seven pages back.

11 MR. HIPPLE: Here's my P-37.

12 MR. BERKOWITZ: It's in there -- they're all  
13 in there -- here it is.

14 MR. HIPPLE: Okay.

15 MR. BERKOWITZ: It's here. Too many yellow  
16 flags in here. Okay. There you go.

17 BY MR. BERKOWITZ:

18 Q And that pertains to the formula?

19 A Yes, it does.

20 Q Okay. Secret formula, right? And read the name at  
21 the -- on the top that's got the secret formula?

22 A You're referring to Colonial Chemical and Scientific  
23 Chemical, Inc.?

24 Q Yes, that's Scientific Chemical without an S,  
25 correct?

1 A Scientific Chemical, Inc.

2 Q Without an S? It's not Scientific Chemicals?

3 A Correct.

4 Q And look in the parentheses right next to that.

5 A It indicates SCIX.

6 Q Indicates SCIX. Okay. Now --

7 THE COURT: What's the date of that anyway?

8 MR. BERKOWITZ: That is in --

9 MR. HIPPLE: '99 -- '99.

10 MR. BERKOWITZ: -- 1999.

11 THE COURT: Thank you.

12 BY MR. BERKOWITZ:

13 Q And there was a patent in 1999, right?

14 A I believe there was, yes.

15 Q Okay. So what this is, Mr. Hipple is taking his  
16 patent on this product and splitting it from the patent  
17 that's owned by SCIX to separate the formula that's  
18 patented and the patent. Wouldn't that be correct?

19 MR. HIPPLE: Objection, Your Honor. That's  
20 not --

21 THE COURT: Overruled.

22 THE WITNESS: I'd have to read through the  
23 document. I do recall seeing this, but I don't recall  
24 what you described.

25 (Pause in proceedings.)

1 THE WITNESS: All right. Can you repeat your  
2 question, please?

3 BY MR. BERKOWITZ:

4 Q Sure. This confidentiality applies to -- and it  
5 talks about, if you look in the first paragraph, "CCC  
6 and SCIX" --

7 A Yes.

8 Q -- "agreed to furnish to one another access to  
9 certain confidential information relating to the affairs  
10 of the company solely for the purposes of acknowledging  
11 concepts provided by CCC and SCIX for processing of  
12 specialty chemicals for the ultimate use as a head  
13 gasket sealant."

14 A Yes.

15 Q Okay. And those are the -- that's what they're  
16 protecting?

17 A Yes.

18 Q And you heard -- they talked about a secret formula?

19 A Yes.

20 Q Okay. And if you look at Exhibit 18 --

21 A This is Plaintiffs' 18?

22 Q Plaintiffs' Exhibit 18. Do you see that, the first  
23 page?

24 A Yes. This is --

25 Q And I'm going to go --

1 A -- December 26, 2010?

2 Q Correct. And that's a letter from Complete Group  
3 signed by Clement Hipple?

4 A Okay.

5 Q And it says, "My company, Complete Group, LLC, is  
6 now the successor in interest to the confidentiality  
7 agreement executed between SCIX, LLC, and Colonial  
8 Chemical on March 29, 1999, regarding the formula of a  
9 chemical sealer now known as Steel Seal."

10 A Yes, I read that.

11 Q Do you see that?

12 A Uh-huh.

13 Q Okay. So whatever was in that confidentiality  
14 agreement, now this secret formula again split from the  
15 patent, is now in the hands of Complete Group, correct?  
16 That's what that says?

17 A By this agreement, yes.

18 Q Okay. And let's read the next sentence. "I  
19 understand that there has been a recent modification to  
20 the formula, so I need to receive a copy of the latest  
21 version."

22 A Yes, I -- I read that.

23 Q Okay. So it looks like that secret formula was  
24 changed, correct?

25 A By -- by indication of this letter, it's changed,

1 yes.

2 Q Okay. Thank you. Now, you indicate in your report  
3 that not all of the assets were conveyed by the transfer  
4 of Steel Seal from SCIX to Steel Seal Pro?

5 A I don't think I stated that all of Steel Seal was  
6 transferred.

7 Q You said all of the assets were not conveyed with  
8 the transfer?

9 A Correct, that's what I said.

10 Q Okay. So -- so there were assets reserved to SCIX  
11 that he didn't transfer?

12 A No, that doesn't mean what that says.

13 Q Say -- say again? I'm sorry.

14 A No, that's not correct.

15 Q Okay. Tell me what you said. I don't want to put  
16 words in your mouth.

17 A Okay. From my understanding of the case, there are  
18 certain assets that were not transferred. These include  
19 the patents and the website, but I don't know that the  
20 website was ever in the name of SCIX.

21 Q Okay. I'm going to ask you to turn to Exhibit 32.  
22 Do you have 32 there?

23 A I think I do.

24 MR. HIPPLE: P-32, right?

25 MR. BERKOWITZ: P-32.

1 THE WITNESS: I have 32.

2 BY MR. BERKOWITZ:

3 Q Okay. And I'd like you to go to the back of that  
4 document and look at the date. I think it's in there.

5 A Under the rule to show cause?

6 Q No, go to the last page -- the -- I'm sorry, it's  
7 probably the verification page.

8 A Okay. The certificate of service is dated June 12,  
9 2012.

10 Q And you -- you would agree with me that you did your  
11 expert report after that date?

12 A I did the report after June 12, yes.

13 Q Okay. And in your report, you assumed that certain  
14 assets were not transferred and that SCIX retained  
15 assets, correct?

16 A I assumed that certain assets were not transferred,  
17 and, yes, SCIX may have retained some of those assets,  
18 not necessarily all of them as I indicated, the website  
19 may not have been in there.

20 Q I'd like you to turn to paragraph six of this  
21 petition to intervene filed by Clement Hipple and  
22 Complete Group. Do you see that in this Bucks County  
23 case?

24 A I am at paragraph six.

25 Q Okay. And I'm going to read it to you. It says,

1 "Petitioners" -- and that's Clement Hipple and Complete  
2 Group -- "and respondent" -- and that's Teresa Hipple --  
3 "are creditors of SCIX but petitioners believe and  
4 therefore aver that they are the sole owners of the  
5 assets, including the patents formerly owned by SCIX and  
6 that respondent's receiver petition is a back door  
7 attempt to levy upon assets no longer owned by SCIX."

8 Do you see that?

9 A I'm reading along with you, yes.

10 Q Did I read it correctly?

11 A I think that you did.

12 Q Okay. Now, go to paragraph 21.

13 A I'm at paragraph 21.

14 Q You see paragraph 21. "Petitioners believe and,  
15 therefore, aver that prior to the time of filing of the  
16 receiver petition by respondent, SCIX no longer owned  
17 assets, including patents, which were covered by the  
18 security interest of individual petitioner and turned  
19 over to the individual in accordance with 13 PA CSA  
20 9622."

21 Do you see that?

22 A Yes.

23 Q Okay. Now, let's go to paragraph 22.

24 A I'm at 22.

25 Q I'm going to read that again.



1 "Subsequent to taking possession of the assets  
2 of SCIX in satisfaction of the indebtedness owed to him,  
3 individual petitioner" -- which is Clement Hipple --  
4 "did form corporate petitioner, Complete Group, LLC, in  
5 which entity individual petitioner is an owner and  
6 current managing member and did transfer all of the  
7 assets formerly owned by SCIX, including the rights to  
8 its patents to Complete Group."

9 Did I correctly read that?

10 A Yes, I believe you did.

11 MR. BERKOWITZ: And, Your Honor, these are in  
12 -- in record if -- I don't want to read them all unless  
13 you believe it's necessary.

14 BY MR. BERKOWITZ:

15 Q I'd just like you to look quickly at paragraph 23.

16 A Yes, I'm at 23.

17 Q Okay. You see that includes the patents?

18 A I see it says, "in addition to the patents."

19 Q Okay. And 24 they took manufactured product --  
20 chemical products manufacturers, pursuant to SCIX's  
21 patents?

22 A To liquidate the inventory of chemical products  
23 manufactured pursuant to SCIX's patents, yes.

24 Q Okay. And let's look at 25. I'm going to read  
25 that.

1 "Subsequent to the foregoing, on or about the  
2 9th day of June, 2011, respondent did file the receiver  
3 petition, seeking to have a receiver appointed over SCIX  
4 and its alleged assets, all of which were owned by  
5 individual petitioner and corporate petitioner prior to  
6 the filing of such receiver petition by respondents."

7 Do you see that?

8 A Yes.

9 Q Okay. And I'm going to represent to the Court that  
10 there was never a receiver petition. That's what they  
11 had defined it as, it was a petition asking the Court to  
12 enforce the sale of the patents.

13 Do you see that?

14 A Yes.

15 Q Now, let's go to 27. "Petitioners believe and  
16 therefore aver that they are the owners of the patents,  
17 which patent is still registered in the name of SCIX."

18 A Yes.

19 Q Okay. So you didn't know this when you issued your  
20 report?

21 A When I did my patent search, it indicated SCIX, and  
22 then I looked for an assignment of the patent, and it  
23 had gone to the plaintiff.

24 Q Well, that assignment you saw was a recording of her  
25 Bucks County judgments, but --

1 A Okay, so I was aware of that, yes.

2 Q Okay. Her -- her filing with the patent office  
3 indicated that there was a patent, and it had a lien by  
4 Teresa Hipple?

5 A I didn't see that in the patent office. What they  
6 indicated is who the patent had been assigned to.

7 MR. HIPPLE: Objection, Your Honor.

8 THE COURT: On what grounds?

9 MR. HIPPLE: On the grounds that he is not  
10 identifying -- there's three patents here, and he has to  
11 identify which patent he is speaking about.

12 THE COURT: All right. I'll --

13 MR. BERKOWITZ: Your Honor, I'm cross-  
14 examining the --

15 THE COURT: -- I'll overrule the objection.

16 MR. BERKOWITZ: -- witness.

17 THE COURT: Overruled.

18 BY MR. BERKOWITZ:

19 Q Now, I would like you to look at, I believe it's --  
20 I'll make it easy. I think it's a plaintiff's exhibit,  
21 but it's also a defense exhibit. I would like you to  
22 look at Exhibit 11.

23 A All right. P-11.

24 THE COURT: Plaintiff's exhibit?

25 MR. BERKOWITZ: Plaintiff's Exhibit 11.

1 THE COURT: Yes.

2 BY MR. BERKOWITZ:

3 Q Do you see that?

4 A Yes.

5 Q And are you familiar with that document? Have you  
6 ever seen that before?

7 A Let's take a look. I've certainly seen UCCs before.  
8 I don't know that I've seen this one though.

9 Q Okay. Well, that's a Pennsylvania form. You may  
10 not have seen that. I'd like you to look at the second  
11 page. And, well, first, let's look at the first page.

12 A Sure.

13 Q Do you see right at the top, he's -- he's  
14 encumbering general intangibles?

15 A Yes.

16 Q Okay. And general intangibles, you talked about  
17 before?

18 A Yes.

19 Q Things you can't put in your pockets?

20 A That's correct.

21 Q Okay. And that might be a patent?

22 A Yes.

23 Q It might be a secret formula? Could be a website?

24 A I don't know if it would include a secret formula,  
25 quite frankly, because I don't know how you protect it.

1 Q You don't know if you can sever --

2 A Exactly.

3 Q -- a patent from a secret formula?

4 A Well, the value of a secret formula is in its  
5 secrecy, and I don't know if you can sell a secret. I  
6 suppose you can.

7 Q If I sold you Coca-Cola for \$100, would you gladly  
8 buy it?

9 A I'm sorry. I just have to pause about it. I  
10 haven't seen a secret getting sold, per se, certainly --

11 Q A secret formula, not a secret --

12 A Okay, a secret formula? Yes, I'll go along with  
13 that.

14 Q Okay. And now, let's look at the next page, the  
15 Exhibit A that's attached to that.

16 A Yes.

17 Q Let's look at the assets that they encumbered --

18 A Okay.

19 Q -- that Clement Hipple encumbered. Do you see that,  
20 websites?

21 A Yes.

22 Q Okay. An 800 number?

23 A Yes.

24 Q You would agree with me that's kind of hard to pick  
25 up?

1 A It is.

2 Q Okay. Steel Seal logo?

3 A Yes, that's what this indicates.

4 Q The rights to the names?

5 A Rights to the name.

6 Q Confidentiality agreement with Colonial Chemical?

7 A Yes.

8 Q And the formula?

9 A And the formula, yes.

10 Q Okay. Then I'm going to represent to you that that  
11 is what Clement Hipple foreclosed upon.

12 MR. HIPPLE: Is that on page two?

13 MR. BERKOWITZ: It's in the UCC-1. It's the  
14 second page.

15 THE COURT: It's Exhibit A, right?

16 MR. BERKOWITZ: It's Exhibit --

17 MR. HIPPLE: I don't see it.

18 MR. BERKOWITZ: Yes, it is Exhibit A to  
19 Exhibit 11. It's the UCC-1 with the attachment.

20 THE WITNESS: This doesn't have it then, I  
21 guess. I'm not seeing what --

22 MR. BERKOWITZ: It's in your exhibits, also,  
23 Your Honor.

24 THE COURT: I could show you my copy if you  
25 wish.

1                   Why don't you show it to Mr. Berkowitz and  
2                   make sure it's the right document?

3                   MR. BERKOWITZ: It's -- I'll get it for in the  
4                   D exhibits.

5                   THE COURT: Is this the right one?

6                   MR. BERKOWITZ: It's D-3. Yes, that is it.

7                   MR. HIPPLE: Look under D-3?

8                   THE COURT: It might have become detached from  
9                   that because we were taking those out, so --

10                  MR. HIPPLE: Okay, and this is part of this  
11                  UCC filing, correct?

12                  MR. BERKOWITZ: Yes. This is the Defendant's  
13                  Exhibit D-3. I have it as a separate exhibit, as well.

14                  BY MR. BERKOWITZ:

15                  Q    Okay. So -- I'm sorry. In your critique of Mr.  
16                  Geisser's report where it says, "Omission, not all  
17                  assets were conveyed with the transfer", you weren't  
18                  aware of the information you just saw?

19                  A    I'm looking at this information indicates websites,  
20                  but it doesn't say --

21                  Q    I'm sorry. I'm not talking about the websites. I'm  
22                  talking about the petition to intervene that you looked  
23                  at. You weren't aware of that?

24                  A    No, I was not.

25                  Q    Okay. And that was filed by Mr. Hipple?

1 A Yeah, if you say so.

2 Q And you would have liked to have seen that before  
3 you issued this report, wouldn't you?

4 A I was doing a rebuttal of Mr. Geisser.

5 Q Well, you said that not all the assets were  
6 transferred. Wouldn't you have wanted to know that all  
7 of the assets were transferred?

8 A If that's, in fact, what happened. As I said, I  
9 looked at the patent site, and it clearly showed who the  
10 assignee was.

11 Q I'm not asking you about the patent site.

12 A Okay.

13 Q I'm asking you, wouldn't you have wanted to know  
14 before you put in your report, "Omissions, not all  
15 assets were conveyed with the transfer", you would have  
16 liked to have seen that petition to intervene that  
17 contradicts what you put in your report?

18 A I'm looking to see what contradicts.

19 Q I'm sorry. Would you like to go over that exhibit  
20 again? That's the one we just --

21 A Yes, the website.

22 Q -- looked at, Exhibit 32.

23 A We were referring that there were two assets that  
24 weren't transferred, websites and patents, and you just  
25 told me, no, don't worry about the patents, so it leaves



1 the website. A UCC-1 indicates that there's an  
2 attachment on the website.

3 Q I'm sorry. You're not --

4 A But SCIX doesn't have a website.

5 Q -- you're not listening to my question. Excuse me,  
6 don't answer the question you want to answer. Answer  
7 the question I ask you.

8 There's a petition to intervene. You just  
9 looked at Exhibit 32, correct?

10 A I'm looking at Exhibit 11. I'll go back to 32.

11 Q Now, go back to 32.

12 (Pause in proceedings.)

13 A I'm back at 32.

14 Q Okay. Now, in your report, it says, "Omission, not  
15 all assets were conveyed with the transfer." Now, the  
16 transfer you're talking about is the transfer of the  
17 SCIX assets from SCIX to Clement Hipple, correct?

18 A That's correct.

19 Q And that petition says all of the assets were  
20 transferred, doesn't it?

21 Do you want to go through it again?

22 A Yes.

23 Q I'll go through it again.

24 A I'm not trying to be difficult, but I want to be  
25 very careful --

1 Q Sure.

2 A -- and make sure I answer accurately. You started,  
3 I think, at 17, "take possession of assets", but it  
4 never tells us what the assets are.

5 THE COURT: Later on, there's some other  
6 paragraphs that refer to the patents.

7 THE WITNESS: I'm -- I'm going to 22.

8 BY MR. BERKOWITZ:

9 Q Look at 22. Read the last few lines.

10 A "All the assets formerly owned", but again, we don't  
11 know what those assets are.

12 Q But it says, all, right?

13 A It does say all.

14 Q And it doesn't say, some, right?

15 A That's correct.

16 Q And you know the difference, right?

17 A Yes, sir, I do.

18 Q So before you said, not all the assets were  
19 transferred, you would have liked to have seen the  
20 petition filed by Mr. Hipple in Bucks County?

21 MR. HIPPLE: Objection, Your Honor. He --

22 THE WITNESS: I would have reviewed --

23 MR. HIPPLE: -- he's talking about something  
24 that I -- I never levied on the patents. Okay? So that  
25 all of the assets were not transferred.

1 THE COURT: All right. I -- I can --

2 MR. HIPPLE: I never levied on them, Your  
3 Honor.

4 THE COURT: -- well, I can read also. I  
5 understand the point that Mr. Berkowitz is saying about  
6 the representation that were made in the Bucks County  
7 Court --

8 MR. HIPPLE: But again --

9 THE COURT: -- by the lawyers and by --

10 MR. HIPPLE: -- but again, I never -- I never  
11 levied. There's no documentation.

12 MR. BERKOWITZ: I'm going to object to Mr.  
13 Hipple testifying --

14 THE COURT: Right.

15 MR. BERKOWITZ: -- right now.

16 MR. HIPPLE: He cannot produce any  
17 documentation.

18 THE COURT: I'll overrule the objection. Go  
19 ahead.

20 BY MR. BERKOWITZ:

21 Q Now, under the next omission in your report -- and  
22 there are no pages -- page numbers on your report.

23 A No, paragraph numbers.

24 Q This is under paragraph 11.

25 A Certainly. Yes?

1 Q And it says, "Another factor that was not addressed  
2 in plaintiff's expert report is the fact that SCIX did  
3 not own the website it used to sell its product,  
4 Scientific Chemical, Inc."

5 SCI owned the website, correct?

6 A I'm sorry. You said paragraph 11, and I'm in the  
7 wrong place.

8 Q I'm sorry, the second -- well, there's a second  
9 omission, not all assets.

10 A Okay. So that's paragraph 12. Yes?

11 Q Okay. And you read, before, Exhibit 18. It talks  
12 about the transfer of the confidentiality agreement,  
13 correct?

14 MR. HIPPLE: I object to that, Your Honor,  
15 because there is no signature on that -- that Colonial  
16 Chemical had acknowledged or accepted that letter in  
17 order to keep the confidentiality agreement.

18 THE COURT: I'll overrule the objection.

19 THE WITNESS: All right. We are at Exhibit  
20 18.

21 BY MR. BERKOWITZ:

22 Q You see, it talks about, you know, he's got the  
23 confidentiality agreement, right?

24 A Okay, but --

25 Q It was transferred?

1 A -- instead of 12, I thought -- I thought we were  
2 talking about paragraph 12 and the website?

3 Q No.

4 A We've -- we've moved on?

5 Q If I'm going too fast, that's okay. I -- I -- we  
6 just went to Exhibit 18.

7 A Okay, I'm sorry.

8 Q Okay?

9 A I'm behind. Yes, I'm looking at Exhibit 18.

10 Q Okay. You see that confidentiality agreement  
11 somehow got somewhere else, right?

12 A These are letters to Colonial Chemical?

13 Q Yes.

14 A One from Complete Group; the other, SCIX. Yes,  
15 okay.

16 Q Okay. All right. Now, you talked about, in your  
17 testimony, the effect of the garnishment of Teresa  
18 Hipple on the bank account at Wachovia Bank, do you  
19 recall that?

20 A Yes.

21 Q And you said that that sort of stuck the business?  
22 Was that -- I don't want to put words in your mouth.

23 A I think so. I would refer to Mr. Geisser's report.  
24 I think it had a negative \$35, although, I'd need to  
25 look.

1 Q It garnished the account. It took the money out of  
2 the account?

3 A Yes.

4 Q Okay. You're familiar with a garnishment? You're  
5 an attorney.

6 A Yes.

7 Q You work with UCCs?

8 A I've worked with UCCs.

9 Q Okay. Now, so there is nothing, is where, that  
10 would prevent SCIX from opening a new bank account with  
11 a garnishment, is there?

12 A No.

13 Q Okay. So the money from the sale of Steel Seal  
14 could have just as easily flowed into a new bank  
15 account, correct?

16 A It could have moved to a new bank account --

17 Q Sure.

18 A -- yes.

19 Q And just like after the death of Brian Hipple, we  
20 saw, after his death, money continued to flow into the  
21 Steel Seal Pro bank account, right?

22 A It did.

23 Q Because the sales on the Internet continued,  
24 correct?

25 A Yes, they did, for at least some period of time.

1 Q And the garnishment -- the garnishment did nothing  
2 to interfere with the business of Steel Seal, other than  
3 emptying the bank account at Wachovia Bank?

4 A What they kept in the bank account is -- it's  
5 relevant.

6 Q And you have no idea, nor do I, whether they had  
7 another bank account, do you?

8 A No.

9 Q Okay. And they could have opened a new one, right?  
10 That's pretty easy.

11 MR. HIPPLE: Objection, Your Honor, projection  
12 on his part.

13 MR. BERKOWITZ: I'm cross-examining an  
14 expert --

15 THE COURT: Overruled.

16 MR. BERKOWITZ: -- Your Honor.

17 THE COURT: Overruled.

18 BY MR. BERKOWITZ:

19 Q So a business existed, right? Steel Seal was still  
20 being sold?

21 A At what point in time?

22 Q When the garnishment took place.

23 A Yes.

24 Q And a new bank account could have been opened?

25 A Yes, it could have been.

1 Q And business would have gone on as usual, right?

2 A There was probably a point in time where there was  
3 little or no money, even if they reopened and turned  
4 this thing around quickly, they went from \$53,000 to  
5 negative 35.

6 Q \$35, not 35,000, correct?

7 A Yes, correct, \$35.

8 Q A bank service charge, because their account has no  
9 money in it, right, and checks might bounce --

10 A Probably right.

11 Q -- when a garnishment takes place, correct?

12 A Yes, that's probably correct.

13 Q Okay. So we're not talking about a lot of money,  
14 right, \$35?

15 A Well, we're talking about a business that had  
16 \$53,000, and now has negative 35, so you could --

17 Q And -- and it has --

18 A -- restart the accounts, but it could take awhile  
19 before you have any sizable money, and -- and we don't  
20 know what the bills looked like at that point in time,  
21 and --

22 Q You have no idea, do you?

23 A We know they're out \$53,000.

24 Q Yes, we do, but you don't have any idea what the  
25 bills are, right?



1 A I do not.

2 Q You, personally, don't?

3 A No.

4 Q And neither do I because they never turned them  
5 over. They could have turned them over, right?

6 A I don't know.

7 Q And do you know, in fact, that there is only one  
8 creditor of the company that didn't get money from SCIX?

9 A No, I'm not aware of that.

10 Q Okay. So every other creditor that they might have  
11 had got paid. You heard -- you were here yesterday when  
12 the witness from Colonial Chemical testified, as far as  
13 he knew, there was no problem. Everybody was getting  
14 paid?

15 A As far as he knew, he was getting paid, yes.

16 Q Yeah, okay. Now, you're familiar with the Steel  
17 Seal Pro business?

18 A You're going to tell me what you're asking in terms  
19 of familiar?

20 Q I'm asking, you've heard of Steel Seal Pro?

21 A Yes.

22 Q And you know what Steel Seal Pro did?

23 A It sold the Steel Pro product, yes.

24 Q The Steel Seal product?

25 A Yes.

1 Q And Brian Hipple sold the Steel Seal product?

2 A That's what I understand, yes.

3 Q And he -- well, he didn't testify. They -- Steel  
4 Seal Pro used the same website, the same 800 phone  
5 number, the same logo, the same product, everything,  
6 when it continued the business, right?

7 A I don't know all of the details of how it moved on,  
8 but they continued the business, yes.

9 Q And you heard Mr. Geisser testify that from his  
10 examination of the bank records, he saw a continuous  
11 flow of business and the same pattern of activity?

12 A I don't know how specific he was being with that.

13 Q Well, you heard that, though?

14 A Well, what I am pausing on is, for example, we saw  
15 no costs of goods sold go in for several months in 2011,  
16 so I think if you're referring to just, generally, it's  
17 the same business or it's doing business as SCIX, then,  
18 I would have to agree. But with it, specific, no, I  
19 don't think that that would be the case.

20 Q I'm going to show you an exhibit -- an exhibit, if  
21 you give me a --

22 MR. BERKOWITZ: I believe it's Plaintiff's  
23 Exhibit 136.

24 (Pause in proceedings.)

25 THE WITNESS: I think we took that out.

1 MR. BERKOWITZ: No, it was not offered,  
2 because I hadn't used it yet. I'm going to use it now.

3 MR. HIPPLE: I don't have it in my book.

4 THE WITNESS: Because you took it out  
5 yesterday.

6 MR. BERKOWITZ: It was in the book.

7 MR. HIPPLE: And we took it out yesterday.

8 THE WITNESS: No, he took it out yesterday.

9 THE COURT: Here, you can have my copy.

10 THE WITNESS: I'm sorry, Your Honor.

11 THE COURT: No, here, it's no problem.

12 BY MR. BERKOWITZ:

13 Q And I'm going to --

14 (Off the record discussion.)

15 BY MR. BERKOWITZ:

16 Q May I represent to you, sir, that I went through --  
17 I'm going to ask you to look at Exhibit 21. The  
18 gentleman from Colonial Chemical authenticated all of  
19 the invoices for the product.

20 Do you see that? They produced the inventory?  
21 They produced the Colonial Chemical product?

22 MR. HIPPLE: I object, because you would have  
23 to identify with these the invoices to make sure that  
24 it's correct.

25 THE COURT: Sir, he's just using it right now

1 for impeachment. I'm going to overrule the objection.  
2 He is not, at this point, introducing it into evidence.  
3 He's just trying to use it to cross-examine. Go ahead.

4 I'm sorry, your last question?

5 BY MR. BERKOWITZ:

6 Q You see, in 2011 --

7 A What page are you on?

8 Q I'm sorry. You can start with Exhibit 21. That is  
9 the invoices we looked at yesterday.

10 A These -- are these out of order intentionally? So  
11 I'm just --

12 Q I did them by year, and there's a reference in the  
13 column next to it that shows what exhibit they come  
14 from.

15 A I'm looking for 21.

16 Q Exhibit 21 --

17 A Oh, no, I'm sorry, I meant, Exhibit 21 -- I'm  
18 looking for your page number down the bottom right-hand  
19 side.

20 Q I'm sorry?

21 A The page number. Do you have a specific invoice you  
22 want me to look at?

23 Q I'm sorry.

24 A I'm sorry. If there a specific page number you want  
25 me to look for?

1 Q You look here, Exhibit 21, page number.

2 A Okay, thank you.

3 Q All right? And --

4 A 53.

5 Q -- you just line those up.

6 (Pause in proceedings.)

7 MR. HIPPLE: Your Honor, also, it's showing  
8 16-ounce bottles sold. This -- bills are in with them.

9 MR. BERKOWITZ: I'm not using that, Your  
10 Honor.

11 THE COURT: Let's wait until we ask some  
12 questions about it. Okay? And then, if you want to  
13 object, you can object.

14 (Pause in proceedings.)

15 THE WITNESS: All right. This reference page  
16 is 52.

17 BY MR. BERKOWITZ:

18 Q And that's in Exhibit 21?

19 A I'm on page 52 in Exhibit 21. It seems to be a  
20 different --

21 Q Is that the invoice dated 3/11/11?

22 A It is dated 3/11/11.

23 Q And is it -- does it have --

24 A But the quantity shipped is 975, not 11,700.

25 Q Hang on. Let me take a look at what you're looking

1 at --

2 A Sure.

3 Q -- and make sure I'm on the --

4 A Page 52.

5 Q Let me -- let me -- can I -- no, I can't see that.

6 A Oh, that's right.

7 (Pause in proceedings.)

8 THE COURT: He's said he's on Exhibit 21,  
9 right?

10 THE WITNESS: Yes, Your Honor.

11 MR. BERKOWITZ: Exhibit 21, page number 52.

12 THE WITNESS: Page 52.

13 BY MR. BERKOWITZ:

14 Q Do you see that? And here's the discrepancy. I've  
15 translated cases into bottles.

16 A Okay, so --

17 Q You're looking at invoices.

18 A Yes.

19 Q This is an invoice?

20 A Yes, sir.

21 Q And it shows a dollar extension? I translated this  
22 on this, into bottles. If you look in the right column,  
23 16-ounce bottles sold. If you'd like to go through the  
24 math, the gentleman from Colonial Chemical testified  
25 yesterday that there are 12 bottles in each case of 16-

1       ounce?

2       A    Okay.  So that's 975 cases.

3       Q    Times 12.

4       A    And so that's where they got the 11,700.  I'm sorry.  
5       You don't have dollars on this.  Okay.

6       Q    Okay.  So what I'm showing there, they don't get  
7       product every week, do they?

8       A    No, they don't.

9       Q    They get it spread out through the year?

10      A    That's correct, but they --

11      Q    Those are yearly purchases.

12      A    -- they're not constant purchases.  Sometimes, they  
13      seem to be buying more; other time, less, but yes,  
14      through the year.

15      Q    Okay, right.  So that this is not a product that  
16      comes in every day, is invoiced every day and goes --  
17      goes out every day.  It comes in in bulk?

18      A    Yes.

19      Q    Okay.  Now, as a matter of fact, let's look at that.  
20      We're on Exhibit 136.

21      A    Yes, 136.

22      Q    I don't know where my 136 went.

23                       (Off the record discussion.)

24                       MR. BERKOWITZ:  Thank you.  Thank you.

25      BY MR. BERKOWITZ:

1 Q I'm going to help you out with my --

2 A Solar calculator, good for you.

3 Q I paid \$1.50 at Staples in 1983, and it still works.

4 Let's look at the total number of bottles  
5 purchased in 2011.

6 A Okay.

7 Q All right. And you can add them up, if you want.  
8 I'm representing to you they come right off the  
9 invoices.

10 A Yeah, it -- I --

11 Q These are nine -- these are 16-ounce bottles.

12 A Okay.

13 Q Okay. Now, I'd like you to multiply the number of  
14 bottles.

15 A For 2011?

16 Q Yes, by \$44.95, which I'm going to represent to you  
17 is the Internet price of the product.

18 A All right. I get just over \$204,000.

19 Q No. I think you're missing a decimal point there.

20 A Oh, you're right. Two million-oh-four.

21 Q Okay. And this is 2011?

22 MR. HIPPLE: That's the total number?

23 THE WITNESS: Oh, you're right. Okay.

24 THE COURT: What's the total number, there?

25 THE WITNESS: Two million-oh-four-zero-zero-



1 one-one.

2 BY MR. BERKOWITZ:

3 Q And I'd like you to look, if you could, look at Mr.  
4 Geisser's report --

5 A Hm-hmm?

6 Q -- Exhibit B -- do you have Mr. Geisser's report? I  
7 know you --

8 A I did.

9 Q I -- I think it's in --

10 THE COURT: Well, you can approach him, if you  
11 want, and show him --

12 (Off the record discussion.)

13 MR. BERKOWITZ: It's D-38 and 39; P-31.

14 (Pause in proceedings.)

15 THE WITNESS: All right. I have P-31.

16 BY MR. BERKOWITZ:

17 Q All right. If -- let's just write these things  
18 down, so we don't forget. We multiplied 45,000 --

19 A 384.

20 Q 384 times the Internet price of \$44.95, right, and  
21 you got two million --

22 A \$2,040,011.

23 Q Zero-one-one, right?

24 A Yes.

25 Q Okay.

1 MR. HIPPLE: I object to that, Your Honor, on  
2 the basis that --

3 MR. BERKOWITZ: I'm asking the witness a  
4 question about some --

5 THE COURT: Well, let's see what his objection  
6 is. Go ahead.

7 MR. HIPPLE: On the basis that you don't know  
8 how much of this is in the storeroom inventory. He's  
9 putting it all for sale, like it's all disappeared.

10 THE COURT: Well, I'll overrule the objection,  
11 and we'll see where we go with this.

12 BY MR. BERKOWITZ:

13 Q Okay, so that's the sale of those number of bottles?

14 A Yes.

15 Q And I'd like you to look at Mr. Geisser's Exhibit B.

16 THE COURT: It's probably less than that,  
17 because you have to pay the credit card company, right?

18 MR. BERKOWITZ: I'm not talking about  
19 expenses. I'm just talking about gross revenue.

20 THE COURT: No, no, but the credit card  
21 company takes a portion of that, don't they?

22 MR. BERKOWITZ: Yes.

23 THE COURT: Yeah, right.

24 MR. BERKOWITZ: This is gross revenue. The  
25 credit card company sort of comes below that line --

1 THE COURT: Okay.

2 MR. BERKOWITZ: -- all of it comes above.

3 There's a slight adjustment for that, Your Honor.

4 THE COURT: Right. All right.

5 MR. BERKOWITZ: I had a different point I was  
6 trying to make.

7 THE COURT: All right. Okay. Thank you.

8 THE WITNESS: I have a schedule -- his Exhibit  
9 B?

10 BY MR. BERKOWITZ:

11 Q It's -- it's Exhibit B, you said that?

12 A Yeah, okay.

13 Q And do you see the Schedule C? That was from Mr.  
14 Brian Hipple's tax records?

15 A Yes.

16 Q Do you see that under Steel Seal Pro for 2011?

17 A Yes.

18 Q Do you see what the revenue is, the top line, sales,  
19 \$1,249,065?

20 A Yes.

21 Q Okay. And we showed that we purchases enough  
22 bottles for \$2,000,000 of revenue, correct?

23 A I would say that's the -- is that the maximum?

24 Q That's the -- that was the Internet price on the  
25 number of bottles.

1 A You're using your price. I don't know how you  
2 derived your price.

3 MR. HIPPLE: Your Honor, again, I object,  
4 because again, there's no determination whether these  
5 are UK bottles or United States' bottles. They sell for  
6 a different price.

7 THE COURT: You can bring that out later, when  
8 you request him. Okay. Overruled.

9 BY MR. BERKOWITZ:

10 Q And -- and, you know, inventory is running, right,  
11 you get some from the prior year that you have, and you  
12 sell it in the next year? If I buy inventory -- for  
13 example, they bought inventory for 11 -- if you're  
14 looking on Exhibit --

15 A Yeah.

16 Q -- 136? They bought inventory on 11/10/11?

17 A Yes.

18 Q And the next time they bought inventory was in  
19 February?

20 A Yes.

21 Q So there is carry-over from one year to the next?

22 A There probably is.

23 Q Okay. And if you look at the first purchase in  
24 2011, that is in March?

25 A Yes, we saw that check that was actually issued for

1       that in April.

2       Q    Okay.  So inventory carried over from the prior  
3       year?

4       A    Yes, something had to have carried over.

5       Q    Okay.  I'm just looking at gross numbers now.

6       A    Hm-hmm?

7       Q    Let's look at the Schedule C.  It shows 1.249  
8       million?

9       A    Yes.

10      Q    All right.  You would agree with me that there is a  
11      significant difference between the \$2,000,000, based on  
12      the number of bottles purchased and the revenue reported  
13      on the Schedule C?

14      A    There is.

15      Q    And we could do it for the next year, if you would  
16      like.

17                 MR. BERKOWITZ:  But that, we don't have a  
18      Schedule C for, Your Honor.  I'm just using the tax  
19      return.

20                 THE COURT:  Okay.

21      BY MR. BERKOWITZ:

22      Q    We could do the same analysis, couldn't we, on the  
23      next year, 63,900 bottles?

24      A    Yes, you could.

25      Q    Okay.  And we had to cobble together 2013, because

1 we didn't have records, right?

2 A I -- I don't know.

3 Q Okay. You had testified that on Mr. Geisser's  
4 Exhibit E-2.

5 A Yes, on E-2.

6 Q Okay. And if you look for 2011, based on Mr.  
7 Geisser's review of the bank records, there were no UK  
8 sales, do you see that?

9 A Yes, I see, he has a zero for UK revenue.

10 Q Okay. And that was -- again, he only worked with  
11 the bank records, right?

12 A That's my understanding, yes.

13 Q Okay. And you have no knowledge whether there are  
14 any other bank accounts, do you?

15 A I do not have any information on any other bank  
16 accounts.

17 Q Okay. Now, there was -- you had mentioned that if  
18 we look at Schedule -- Exhibit E-2, and then we go to  
19 the second page, and it's a grid that's listed as page  
20 one?

21 A Yes.

22 Q And you see down the right side, Mr. Geisser  
23 classified, P & L classification?

24 A Yes, he did.

25 Q And he took these off the bank statements, and most

1 of them are revenue, right?

2 A Yes, they are.

3 Q Okay. So that's showing the credit card payments  
4 and the income coming in through the Internet?

5 A Yes.

6 Q Okay. And the first one we got OffNet Gateway  
7 billing, do you see that?

8 A No. The first one I have is Google deposits.

9 Q I'm -- I'm -- those are deposits. I'm going down to  
10 the expense on the classifications.

11 A Okay.

12 Q Okay? And he put down an expense for that? He took  
13 what he could take right off of the bank statements, and  
14 I think he testified that they went through them in  
15 their office to determine what was on the list of non-  
16 personal distribution expenses and the others were  
17 expenses? Do you recall that?

18 A Actually, I don't.

19 Q Okay.

20 A I think he -- he said he looked at payees, and he  
21 had some discussions with you, and that's how he  
22 determined who fits in the expense category versus the  
23 distribution category.

24 Q Okay. And let me see if I can find this exhibit  
25 here. Let's go to Exhibit D.

1 (Pause in proceedings.)

2 A I'm at Exhibit D.

3 Q You see that?

4 A Yes.

5 Q Okay. And Mr. Geisser testified that those payees  
6 are listed as people receiving distributions.

7 A I'm sorry, those payees are people? American  
8 Express isn't --

9 Q Those are considered, in his report, distributions?

10 A The amounts considered here are considered, yes, his  
11 distributions.

12 Q Okay. So anything to A&C Building was considered a  
13 distribution?

14 A Yes.

15 Q Because that's Mr. Hipple's company. You understand  
16 that?

17 A I understand he owns it. I don't know that this  
18 doesn't relate to a royalty, license agreement or  
19 something else, so --

20 Q Okay. You -- you also heard Mr. -- or maybe you  
21 didn't hear Mr. Hipple testify that he doesn't have a  
22 personal bank account, and that all --

23 A I was not here for his testimony.

24 Q -- payments to him came of to A&C.

25 A I did not hear that --



1 Q Okay.

2 A -- testimony.

3 Q All right. Well, I'm going to tell you that that's  
4 what was said, that the record will reflect that. And  
5 Mr. Geisser explained that he treated American Express  
6 as a distribution?

7 A Yes, he did.

8 Q Okay. And we went through, in some of the  
9 testimony, I believe, with Melissa Moreno and Mr.  
10 Hipple, and we looked at American Express, and there  
11 were a lot of things we could identify and Ms. Moreno  
12 identified as clearly personal expenses.

13 A I did attend that testimony, but I --

14 Q I believe --

15 A -- if that's what you're telling me.

16 Q -- oh, I thought you were here for that yesterday  
17 morning. I'm sorry.

18 A Ms. Moreno? No.

19 Q Okay. Well, she testified yesterday about a lot of  
20 personal expenses on the American Express bill.

21 A Okay.

22 Q And you also -- Mr. Geisser testified we had no  
23 records underlying to show what could have been a  
24 business expense for SCIX?

25 A I think he said he did review American Express

1 statements.

2 Q Yes. And do you know the name of the American  
3 Express account?

4 A No.

5 Q Do you know the fact that it is not an SCIX account?

6 A No, I don't know that.

7 Q Okay. So it's -- it's not listed as an SCIX account  
8 so Mr. Geisser did not include it as an expense --

9 MR. HIPPLE: Objection, Your Honor.

10 BY MR. BERKOWITZ:

11 Q -- for SCIX.

12 MR. HIPPLE: Objection, Your Honor. One  
13 moment, may I please?

14 THE COURT: Sure.

15 THE WITNESS: That's what he did, yes.

16 MR. HIPPLE: First of all, he said --

17 THE COURT: Wait a minute. Hold on.

18 MR. HIPPLE: He's saying that, okay, these are  
19 personal charges to Melissa, Brian, and they're using it  
20 for their car, for their home, but yet, it's not an SCIX  
21 card. It's not being used for the business. Okay. So  
22 I -- he's going both ways with it. All right. He's  
23 saying, okay, they went to the movies; they bought food.  
24 Okay. Okay. But then Google is on there. Stamps is on  
25 there. UPS is on there. Okay. So again, and then he

1 comes -- when it's convenient, he comes back and says  
2 the card is in SCIX's name. That card has been in that  
3 name since 1976, Your Honor.

4 THE COURT: Okay. Well, then, I'll --

5 MR. HIPPLE: But he just keeps assuming back  
6 that that card was not part of the business.

7 THE COURT: All right. I'll overrule the  
8 objection. You may proceed.

9 BY MR. BERKOWITZ:

10 Q Now, you will see, also, when he has the American  
11 Express number, Mr. Geisser picks those right up off of  
12 the bank account records.

13 A I don't have copies of the checks, so, but I believe  
14 that's what he did.

15 Q It's in his report actually. He lists all of the  
16 checks. We are just looking for a grid of checks.

17 A He lists the checks, but I don't have the check to  
18 figure out what his --

19 Q Correct. You don't have the check.

20 A Exactly. That --

21 Q Let -- let me --

22 A -- that's all I was getting at.

23 Q All right. I'll give you an example. I'll see if  
24 I can quickly pull one off here. If you would go to  
25 Exhibit E-2, page one.

1 MR. HIPPLE: Wait a minute. E-2, page one.

2 THE WITNESS: I'm at E-2, page one.

3 BY MR. BERKOWITZ:

4 Q Okay. And now, I would like you to go down under  
5 the debit. Those are the charges, correct?

6 A Yes.

7 Q And go to 1/4/2001 on -- it's about ten lines down?

8 A Yes, I see it.

9 Q American Express, \$10,142.83?

10 A Yes.

11 Q And I will represent to you those were electronic  
12 transfers right out of the account?

13 A That's fine.

14 Q Okay. And he treated that as a distribution?

15 A He did.

16 Q Okay. And he had no underlying data showing it was  
17 a business expense?

18 A I don't know what underlying data he had, but if  
19 that's what you're representing, I can understand that.

20 Q Okay.

21 A I think that's what he indicated.

22 MR. HIPPLE: Objection, Your Honor, there was  
23 data.

24 THE COURT: I'm sorry, what?

25 MR. HIPPLE: I said, objection. There is data

1 for that bill.

2 MR. BERKOWITZ: Your Honor, we asked for that  
3 data to be produced, and it was --

4 MR. HIPPLE: You have it.

5 MR. BERKOWITZ: -- not --

6 MR. HIPPLE: It's American Express. You've  
7 got the American Express bills.

8 MR. BERKOWITZ: I have the American Express  
9 bill for Scientific Chemical, Clement Hipple --

10 MR. HIPPLE: Here we go with names, again,  
11 Your Honor.

12 MR. BERKOWITZ: -- Brian Hipple. We have  
13 Melissa Moreno's testimony of all the personal expenses  
14 that were on these cards. We had no -- we had the  
15 testimony of Melissa Moreno that Brian Hipple had other  
16 business interests. If you recall, the Muay Tai  
17 business, and actually, you'll see in his Estate Return,  
18 he received a large check from that. I don't know much  
19 about that business. I never had the opportunity to  
20 depose Mr. Hipple, but there were other business  
21 interests, and we had no basis to conclude that any  
22 expense was an SCIX expense, and they were treated as  
23 distributions.

24 THE COURT: All right. I'm going to overrule  
25 the objection. You may proceed.

1 BY MR. BERKOWITZ:

2 Q And if you look --

3 MR. HIPPLE: I'll get to that when I get up.

4 THE COURT: It doesn't mean I'm accepting  
5 this. It's just that he's allowed to question --

6 MR. HIPPLE: Yeah, I know.

7 THE COURT: -- the witness about this.

8 MR. HIPPLE: Well, so am I. I have to prove  
9 that part.

10 THE COURT: Right.

11 MR. HIPPLE: That's all right. No problem,  
12 Your Honor. He can use all of the names he wants.

13 BY MR. BERKOWITZ:

14 Q Now, in reviewing Mr. Geisser's report, you had the  
15 checks there to review?

16 A I don't have the checks, no.

17 Q Well, you have a -- I'm sorry. You didn't have the  
18 check. You have a summary of the checks?

19 A I have Mr. Geisser's exhibits, yes, from his  
20 documents.

21 Q Yes.

22 A Yes.

23 Q Okay. And no request was ever made for the  
24 production of the checks although they are all here  
25 today.

1 A I didn't aks for production of the checks, no.

2 Q Okay. And they could have had the bank records,  
3 because the electronic payments, there are no checks,  
4 right?

5 A No, there are not.

6 Q Okay. Now, let's look down this payee list again.

7 Brian Hipple --

8 A Are we still on page one?

9 Q We are on Exhibit --

10 A E-2?

11 Q -- D.

12 A Oh, we've moved? Okay.

13 Q I'm sorry. I -- I may jump from exhibit to exhibit,  
14 and I apologize if I don't tell you first.

15 MR. HIPPLE: Really, cause we were on E-2.

16 MR. BERKOWITZ: No, we're on D.

17 THE WITNESS: I am on Exhibit D.

18 MR. BERKOWITZ: We're on D. We're looking  
19 at --

20 MR. HIPPLE: Hold on.

21 MR. BERKOWITZ: -- personal distributions.

22 MR. HIPPLE: Hold on. D, go ahead. D, what?

23 BY MR. BERKOWITZ:

24 Q Brian Hipple, he was considered somebody receiving  
25 seller's discretionary income?

1 A Yes, that's correct.

2 Q Okay. Buckingham Friend's School. Ms. Moreno  
3 testified that her children with Brian go to a private  
4 school. You'll agree with me, that's not a business  
5 expense?

6 A If that's what she represented, no, it would not be.

7 Q Okay. And Clement Hipple, again, A&C?

8 A I don't know what these are.

9 Q Okay.

10 A So I can't tell you whether or not they're an  
11 expense --

12 Q Okay.

13 A -- or not, but --

14 Q And you see there's doctors and the like. Mr.  
15 Geisser testified that HAB is H.A. Berkheimer. People  
16 that are local know that that's personal taxes,  
17 personal, local taxes?

18 A I'm sorry --

19 Q Melissa --

20 A -- personal, local taxes?

21 Q Yes. There's a company called H.A. Berkheimer.

22 A Okay?

23 Q If you lived here, you'd be paying money to them --

24 A Okay.

25 Q -- probably. Not in Philadelphia, but in the



1       suburbs. All right. And, Melissa Moreno, she received  
2       -- anything paid to her was considered seller's  
3       discretionary income?

4       A    Well, as I --

5               MR. HIPPLE:  Objection, Your Honor.

6               THE WITNESS:  -- indicated in my report, she  
7       -- in her deposition, she indicated that she had worked  
8       at SCIX and Steel Seal Pro, but yes, that's listed on  
9       here.

10       BY MR. BERKOWITZ:

11       Q    And did you hear Mr. Geisser testify that he did not  
12       see any payroll checks for her?

13       A    I did hear him testify to that, that there was no  
14       W-2.

15       Q    And if you would like to --

16       A    That doesn't preclude her from being a --

17       Q    -- look through the checks for Melissa Moreno, I  
18       think I'll be able to convince you that those were not  
19       payroll checks.

20               MR. HIPPLE:  Objection, Your Honor.

21       BY MR. BERKOWITZ:

22       Q    There were some very substantial checks that are not  
23       payroll. And -- and she testified that those were for  
24       her personal expenses.

25               THE COURT:  What's the objection?

1 MR. HIPPLE: The objection is, she actually  
2 worked for the company, but they were more or less on  
3 the basis of a subcontractor, which Brian had done with,  
4 I believe, most of the people that worked for him.

5 THE COURT: All right. I'll overrule the  
6 objection.

7 BY MR. BERKOWITZ:

8 Q So you see Melissa Moreno? She was considered  
9 distribution?

10 A She was considered distribution, yes.

11 Q Okay. Nevis Administrative Services, we were unsure  
12 about that. There's a disposal -- these are small ones.

13 PA Department of Revenue, personal taxes?

14 A PA Department of Revenue could be --

15 Q These were personal taxes --

16 A Okay.

17 Q -- that Mr. Geisser, I think, talked about. We  
18 looked at some checks, with Melissa Moreno, that went to  
19 the Pennsylvania Department of Revenue with Brian  
20 Hipple's social security number on them.

21 A Okay.

22 Q So you would agree those are personal distributions?

23 A I don't have the check, but I would certainly  
24 understand why he funneled them the way he did.

25 Q Okay. And let's look at Prudential. You see that?

1 A Yes.

2 Q Ms. Moreno testified yesterday that she received a  
3 million dollar life insurance policy from Prudential  
4 from Brian Hipple's death, so we treated what looks like  
5 a premium payment, as a distribution to her.

6 A And the company was --

7 Q To the company.

8 A -- not a beneficiary?

9 Q Correct, the company was not the beneficiary, as far  
10 as I know.

11 MR. BERKOWITZ: If the company was the  
12 beneficiary, I'd like to get a hand at that money, Your  
13 Honor.

14 BY MR. BERKOWITZ:

15 Q Quaint Oak Bank. Ms. Moreno testified that that was  
16 a second mortgage on the home she lived in with Brian?  
17 We considered that a distribution. You would agree with  
18 that, wouldn't you?

19 A If that's what it is, absolutely.

20 Q Okay. And she testified that, if you look down a  
21 couple of lines, Sovereign Bank was the first mortgage  
22 on the home she lived at with Brian Hipple? And if that  
23 is the case, which she testified to, you would agree  
24 that's a -- that's a distribution to the owner?

25 A Yes, it would be.

1 Q That's what we categorized as a distribution to the  
2 owner. Correct?

3 A It would be.

4 Q Okay. And you see there, Teresa Hipple?

5 A Yes.

6 Q We treated that as a distribution to the owner as  
7 part of calculating the seller's discretionary income?

8 A I see that, yes.

9 Q Okay. Now, I would just like you to look up a  
10 little bit, you see there's SCIX expense, do you see  
11 that? A small amount of money?

12 A SCI expense, yes.

13 Q You see that? A small amount of money. It has \$95  
14 one year; \$300 the next, and that was on a check stub.  
15 So that's Steel Seal Pro paying a bill for SCIX, and I  
16 believe it was -- well, I don't want to --

17 MR. BERKOWITZ: I'm sorry. I don't remember,  
18 Your Honor.

19 BY MR. BERKOWITZ:

20 Q It was paying an SCIX bill.

21 A Well, it says the payee is SCIX.

22 Q Well, that's not what the check was, but that -- it  
23 was -- it says, payee, "SCIX expense". It doesn't say  
24 it's the payee of a check.

25 And if you look down, United States Treasury,

1       you see that?

2       A    You said, it's not a payee?

3       Q    I'm sorry. Let's move on to the -- under the payee,  
4       United States Treasury.

5       A    I'm looking at United States Treasury.

6       Q    You see that 30 -- in 2011, \$30,344?

7       A    Yes.

8       Q    I'm going to represent to you that we went through  
9       with Melissa Moreno and identified checks paid for Brian  
10       Hipple's taxes. Okay. And that -- that would be fair  
11       to consider these discretionary expense, or we called  
12       them distributions?

13       A    Right.

14       Q    Okay. So Mr. Geisser, based on this and my  
15       assumptions we made together, if there were any payments  
16       to other businesses or people there weren't on this  
17       list, they were treated as expenses. So if you take all  
18       the checks that you send out, and you categorize them by  
19       defined distributions, and then everything else defaults  
20       to expense, that would give you business expense, cost  
21       of goods sold and distributions.

22       A    We talked about this before that there are timing  
23       issues with how the checks are --

24       Q    I'm not talking about --

25       A    -- being issued.

1 Q -- timing issues, sir.

2 A I am. If you want to get to what --

3 Q All right. I'm talking -- I'm --

4 A -- distributions are --

5 THE COURT: Answer his question. Just, to the  
6 best of your ability, answer his question.

7 THE WITNESS: If you want to take a look at  
8 what distributions are, you do have to look at how  
9 inventory is depleted.

10 THE COURT: Ask your question again.

11 THE WITNESS: I'm sorry. I thought I was  
12 being responsive.

13 BY MR. BERKOWITZ:

14 Q My question was, if you take every check that's  
15 written, the whole universe of payments out of the bank,  
16 which is all we had to work with, and you categorized  
17 clearly, in your report, what are considered  
18 distributions, and everything else is either income,  
19 because it's a debit or expense, because it's a credit,  
20 that's a fair way to analyze how much money is coming  
21 out to the discretionary earnings?

22 A No, I disagree.

23 Q Well, there's only one universe of money, right?

24 A Yes, but you didn't distribute all of it. You said  
25 there are income, expense --

1 Q I'm -- I'm not talking about sending a dividend  
2 check out. That's not how this business operated.

3 A But you could have cash --

4 Q I'm --

5 A -- left over that you haven't distributed, that you  
6 don't have a check for.

7 Q I'm talking about -- we're not talking about cash  
8 left over.

9 A Okay.

10 Q We're talking about --

11 A But you have revenue coming in. You're going to  
12 pull out expenses from check. You're going to pull out  
13 distributions from checks, but you could still have a  
14 balance left over.

15 Q Okay. And that would be profit to the owners,  
16 right?

17 A Potentially, yes.

18 Q Okay. So we could have more to go back to the  
19 owners than what we show as distributed.

20 A But that's why -- is why it gets back to timing  
21 issues, because maybe they had less the year before.  
22 And so you have to look at the whole picture and not  
23 just try and do this.

24 Q Oh, so we -- we went through, and we looked at the  
25 bank records from all the years we had. Now, you

1 criticized Mr. Geisser because we went back and only got  
2 records for two years, right?

3 We could have gone back and recreated their  
4 books and records from the beginning, couldn't we?

5 A I don't know if you could have gone back to the  
6 beginning, but you could have gone back further than you  
7 did?

8 Q Well, you could have gone back and gotten more --  
9 more business records?

10 A Yes.

11 Q Okay. And you could have gotten them, too?

12 A As a rebuttal witness, I didn't need them.

13 Q Your -- the defendant could have subpoenaed the same  
14 records for the bank, couldn't they?

15 A I would assume they could.

16 Q Yeah, they could have, and they didn't, as far as  
17 you know?

18 A As far as I know, they did not.

19 Q And as far as I know, too, they didn't.

20 MR. BERKOWITZ: I don't know if this is a good  
21 time to stop, Your Honor, or --

22 MR. HIPPLE: I would like to ask a few  
23 questions, and then --

24 MR. BERKOWITZ: I'm not done.

25 THE COURT: Yes, let's take a break.



Mr. Pederson - Cross

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1 MR. BERKOWITZ: I'm not done.

2 THE COURT: Yes, let's take a break. It's  
3 almost five of 1:00, so I'll see everybody back at 2:00.  
4 Okay?

5 MR. BERKOWITZ: Thank you.

6 THE COURT: That one exhibit that we gave you  
7 out of my book, 136, if you give it back to my law  
8 clerk, Denise, she'll make a copy for you so I have it  
9 back in my book, okay? Thanks.

10 I'll see you at 2:00.

11 MR. BERKOWITZ: Thank you, Your Honor.

12 (Luncheon recess, 12:52 p.m.)

13 AFTERNOON SESSION

14 (2:04 p.m.)

15 COURTROOM DEPUTY: All rise.

16 THE COURT: Good afternoon, everyone.

17 ALL: Good afternoon, Your Honor.

18 THE COURT: Proceed. Mr. Pederson?

19 (The witness retakes the stand.)

20 BY MR. BERKOWITZ:

21 Q You all set, Mr. Pederson?

22 A Pederson, yes.

23 Q Pederson. I'm sorry. I -- I recall this morning  
24 that you testified that Melissa Moreno worked for Steel  
25 Seal Pro, and the pay that she received was reflected as

1 a distribution and not as an expense?

2 A I think what I indicated was, in her deposition, she  
3 indicated she was working for SCIX and at Steel Seal  
4 Pro.

5 Q Okay. Let me -- I would like to read from her  
6 deposition. If you would like to read along, there may  
7 be a copy somewhere, but I'll --

8 A I don't think that's necessary.

9 Q -- I'll show it to you after I read it.

10 This is my question to her, "Where was the  
11 office of Steel Seal?"

12 "Answer: Kellers Church Road in Pipersville, I  
13 believe."

14 "What did they do there?"

15 "That was where they ran the business."

16 "Question: Did you ever work there?"

17 "Answer: No."

18 A All right. Can I reference my report, and I'll see  
19 if I --

20 Q Yeah. I -- just a small point. I just wanted to  
21 show you the deposition --

22 A Oh, certainly.

23 Q -- because I believe you had testified that she had  
24 worked there.

25 A I'll have to see which businesses she is referring

1 to.

2 Q Steel Seal Pro, in the question.

3 A Okay.

4 Q All right. So your testimony that your recollection  
5 was that she worked for Steel Seal Pro would be  
6 incorrect?

7 A I -- I don't know that.

8 MR. HIPPLE: Your Honor, I object.

9 THE WITNESS: I mean, let's see if I can  
10 find --

11 THE COURT: Go ahead.

12 MR. HIPPLE: I object to the -- he's not  
13 giving any time limits or anything as far as the  
14 location is concerned in Pipersville. I think that that  
15 was only a period of over three months. Other than  
16 that, they worked out of the house, which Ira Krassan  
17 verified earlier that would see them at the house --

18 THE COURT: You can --

19 MR. HIPPLE: -- all the time.

20 THE COURT: -- you can bring that up in your  
21 case, when you testify. I'll overrule the objection.

22 BY MR. BERKOWITZ:

23 Q Mr. Pederson --

24 A Yes?

25 Q -- you also, I believe -- I'm sorry. Were you

1 looking at your report?

2 A I am.

3 Q I don't want to cut you off.

4 (Pause in proceedings.)

5 A I have deposition references. I didn't see where  
6 you were. I've got page 24, line 20.

7 Q Okay. That was page 11, line 15, and 24/20 is what  
8 you're referring to?

9 A Yes.

10 Q Sorry, I don't -- I don't see what you're referring  
11 to, but let's move on.

12 A I'll be happy to take a look.

13 Q No, that's okay. Now, you had mentioned before, and  
14 again, I don't know if you misspoke with this, an A&C  
15 lien? Do you recall that? I wrote that down in my  
16 notes.

17 A I may have been -- there's A&C, and there is OVER-  
18 THE-COUNTER, as I recall. I'm trying to --

19 Q JC -- yeah.

20 A I'm sorry. I may have confused them, if it was JC.

21 Q JC Consultants, is that the one?

22 A Oh, I'm sorry, I'll have to take a look for it. I  
23 think we were in the area of liabilities, were we not,  
24 when we were discussing that?

25 (Pause in proceedings.)

1 A I apologize. I'm still looking for it, because I  
2 recall it in the report.

3 (Pause in proceedings.)

4 A JC Consulting and Leasing Corporation.

5 Q And you considered those liens?

6 A Yes, and I -- my reference is Teresa Hipple's  
7 deposition from September 18th, 2013.

8 Q Okay. So it's your understanding that JC  
9 Consultants had liens on --

10 A SCIX.

11 Q -- SCIX?

12 A Yes, sir.

13 Q And you consider that to be a detriment to the  
14 business value?

15 A If your valuing the business on a 100 percent  
16 ownership interest, it would, yes.

17 Q Okay. But Mr. Geisser didn't value it on 100  
18 percent ownership interest. He valued it based on the  
19 cash flow generated by the sale of Steel Seal, isn't  
20 that correct?

21 A Not entirely. I don't think he valued it. I think  
22 what he tried to do is determine what their earning  
23 stream was.

24 Q He -- he determined the distributable cash flow?

25 A That's what he attempted to do, yes.

1 Q Okay. So he wasn't talking about selling 100  
2 percent ownership interest, if I were to buy a business,  
3 and you were to be selling a business? That's not what  
4 he was doing --

5 A Well, the 100 percent --

6 Q -- because we didn't have a buyer and a seller here,  
7 did we?

8 A The 100 percent interest is from his report. That's  
9 what he's describing he's doing, but that's not what he  
10 did, that's right.

11 Q He was valuing the revenue generated by Steel Seal,  
12 wasn't he?

13 A I -- I am reluctant --

14 Q And the distributable cash flow?

15 A -- to use the word, value, but he was measuring the  
16 distributable cash flow, yes.

17 Q From the sale of Steel Seal?

18 A Yes.

19 Q Okay. Now, and you talked about the fact that the  
20 liabilities would affect the sale price of a business  
21 like that?

22 A If we're talking about the sale of the business,  
23 yes, it would. It's the presumption being that the  
24 liabilities would go with the rest of the business.

25 Q Okay. So if I were buying the business, and I were

1 buying the assets and liabilities, the liabilities would  
2 be --

3 A Right. You were buying 100 percent interest.

4 Q Right. It would be a deduction?

5 A Yes, it would.

6 Q Okay. I'm going to ask you to pardon my poor  
7 drawing, but I'm not much of an artist.

8 MR. BERKOWITZ: Your Honor, that's a house.  
9 Okay? Not a very good one, but I'm going to give you  
10 some information that I would like you to play along  
11 with.

12 BY MR. BERKOWITZ:

13 Q This house is worth \$100,000. Okay?

14 A Okay. So we're just going to say it's worth --

15 Q This house is worth \$100,000.

16 A Okay.

17 Q And I come along, and I buy this house for \$100,000.  
18 All right. That \$100,000 goes to the owner of the  
19 house, right, he'd get it all?

20 A Yes, as I understand your situation. Yes.

21 Q Okay. Now, we have owner two. I own the same exact  
22 house, but I have a \$5,000 mortgage on the house, small  
23 mortgage, and a home equity loan to put a new roof on or  
24 whatever. The house is still worth \$100,000, right?

25 A If you put a new roof on it, it actually might be

1       worth more.

2       Q    Okay.  In my example, it's worth \$100,000, right?

3       A    I understand, yes.

4       Q    And, now, I come along, and I buy the house.  I pay  
5       \$100,000 for it.  The house is still worth \$100,000,  
6       even though there's a \$5,000 mortgage?

7       A    Yes.

8       Q    So when the settlement takes place on the sale of  
9       the house, the owner of the house now gets \$95,000,  
10      correct?

11      A    Presumably, that's what's going on.

12      Q    The bank gets the \$5,000.  They're due the rest of  
13      the money.

14      A    Right, and that's consistent with the value of a  
15      business, sure.

16      Q    Right.  So that the fact that a business has  
17      liabilities doesn't necessarily affect the value of the  
18      asset being transferred?

19      A    It affects the value of the overall entity.

20      Q    The house is still worth \$100,000?

21      A    I agree with that.

22      Q    Okay.  So the fact that the house had a mortgage  
23      didn't decrease the value of the house.  It only  
24      decreased the value of the money the owner was getting.

25      A    So, but the value of your equity did change.



1 Q I'm not talking about equity.

2 A Okay.

3 Q The house --

4 A Yes.

5 Q -- is still worth \$100,000?

6 A Yes.

7 Q Even though I had a mortgage. So that, because you  
8 have debt doesn't necessarily undermine the value of the  
9 asset transferred.

10 MR. HIPPLE: Your Honor --

11 THE WITNESS: In your example, that would be  
12 true.

13 MR. BERKOWITZ: Thank you.

14 MR. HIPPLE: -- we're taking a lot of time  
15 here, and I -- and I know we're on a time limit as of  
16 Friday, okay, and drawing houses and things of this  
17 nature. I -- I need to talk to Teresa, and I need all  
18 day tomorrow for myself. Okay. If Mr. Berkowitz could,  
19 you know, get to the point of everything, it would be  
20 helpful.

21 THE COURT: Okay. Go ahead.

22 BY MR. BERKOWITZ:

23 Q I would like you to look at Mr. Geisser's report.  
24 You had --

25 A I'm sorry, that's --

1 Q Yeah. 31 -- hang on. I think it's over here.  
2 Right here. Thank you. Here it is. And this is  
3 Exhibit D, and I'm going to go to Exhibit E, if you  
4 could?

5 MR. HIPPLE: E, what?

6 THE WITNESS: I'm sorry, E-2?

7 MR. BERKOWITZ: Yes.

8 (Pause in proceedings.)

9 THE WITNESS: I have E-2.

10 BY MR. BERKOWITZ:

11 Q Okay. And I -- I want you to go to the chart of the  
12 checks.

13 A Okay.

14 Q I think it's the third page.

15 A Yes.

16 Q And, by the way, I think you said that you didn't  
17 have access to the underlying checks?

18 A We didn't have the checks, no.

19 Q Did you ever ask the attorney for the defendant for  
20 the checks?

21 A No, I did not.

22 Q Okay. Because I subpoenaed them and provided them  
23 copies. You could have gotten them, if they had it,  
24 right?

25 A I presume I could have.

1 Q So if you had asked for it, if you needed that  
2 information, you could have got it?

3 A I could have gotten it.

4 Q Okay. Now, you were critical of this particular  
5 Exhibit E-2.

6 A I'm sorry. Are we on page three for E-2?

7 Q Yes. We're starting at the chart, because you said  
8 that there are no expenses reflected until later on.

9 A I think I was referring to cost of goods sold.

10 Q All right. Well, we'll get to that. And we saw --  
11 by the way, you saw those exhibits showing when the  
12 shipments of Steel Seal from Colonial Chemical were  
13 made, and you saw they were on an interim basis, right?

14 A Interim basis, I'd say they were --

15 Q They weren't coming in daily?

16 A No.

17 Q They'd come in big blocks?

18 A Correct.

19 Q Large amounts. Now, let's -- let's go through -- as  
20 I quickly look down the first page, if you look --

21 A I'm sorry. I thought we were on page three.

22 Q Yes. It's the -- it's page one.

23 A Oh, okay.

24 Q It's -- it's page one of the grid, and it's page  
25 three of the exhibit, I believe.

1 A Fine. Okay, I'm with you.

2 Q All right. Now, the first expense you see is OffNet  
3 Gateway billing, right?

4 MR. HIPPLE: We've been there, Your Honor.

5 THE COURT: All right. Go ahead.

6 BY MR. BERKOWITZ:

7 Q Do you see that?

8 A I think the first expenses is -- yes --

9 Q Okay.

10 A -- OffNet Gateway billing, \$10.97.

11 Q Because I previously told you that, and you looked  
12 at the exhibit that Mr. Geisser had done of all the  
13 payments that were considered distributions, right?

14 A Yes.

15 Q And then everything else defaulted to another  
16 category, expense, cost of goods sold, revenue, correct?

17 A It didn't default. He's actually classified them.

18 Q Yes, okay.

19 A Okay.

20 Q And if it wasn't a distribution to one of those  
21 named parties identified, it fell into another category?

22 A Yes, you could look at it that way or vice versa.  
23 Anything that wasn't revenue, cost of goods sold or  
24 expense, fell into distributions.

25 Q Well, only the distributions listed on Mr. Geisser's

1 Exhibit -- I think it is, B. We -- we went through  
2 this before. I don't want to belabor the point.

3 A Except I don't know what the order was, whether or  
4 not you had the list first and then did the  
5 distributions or did the distributions, then came up  
6 with the list.

7 Q No, no, it's -- we're going -- you get to do it my  
8 way here.

9 A Okay.

10 MR. HIPPLE: B?

11 Q We -- we saw --

12 THE WITNESS: Exhibit D, yes.

13 MR. BERKOWITZ: Exhibit D.

14 BY MR. BERKOWITZ:

15 Q We saw the exclusions. Anything that fell into that  
16 category, on Exhibit D, was a distribution, correct?

17 A Well, I think and --

18 Q That was the default category for distribution?

19 A I agree. I think it was a default, but I believed D  
20 probably came from E and not vice versa.

21 Q That's fine. I didn't ask you where they came from.  
22 I just asked you that that's the list of people or  
23 checks that were considered distributions to the owner,  
24 correct?

25 A Yes.

1 Q Okay. And if it wasn't a check to one of those  
2 parties, it was treated otherwise, correct?

3 And we're going to look at those now.

4 A Well, again, I don't know if they were treated  
5 otherwise or it was identified.

6 Q All right. Well, then, we'll go through this.

7 A Okay.

8 Q Let's look at 1/4/2001. You see it's the first  
9 expense on this OffNet Gateway billing. Do you see the  
10 categorization?

11 A Yes.

12 Q Expense, right?

13 A Yes.

14 Q Okay, because it wasn't on the list of  
15 distributions, and somebody in Mr. Geisser's office  
16 determined that that was a legitimate business expense,  
17 right?

18 A I assume that's how it worked.

19 Q Okay. And the next one you see is American Express,  
20 and you saw how we treated that as a distribution,  
21 correct?

22 A I'm sorry. I'm looking for American Express.

23 Q The next one. It is the next one in line.

24 A Oh, sorry. Yes, that's as a distribution. Sorry, I  
25 was looking for expense.

1 Q Okay.

2 A Yes.

3 Q And if you -- if you go down to the next  
4 distribution, check to Brian Hipple?

5 A Yes.

6 Q Okay. And then, you'll go, and you'll see a line of  
7 expenses, after Mr. Hipple's distribution, you see that,  
8 Verizon?

9 A Yes.

10 Q Okay. You took that as business expense. And do  
11 you see there's another Verizon?

12 A Yes.

13 Q You see that? Two different checks written on the  
14 same day, right?

15 A I don't know if this is the day the check was  
16 written or the day the check was cashed.

17 Q That really doesn't matter for the purposes of this  
18 examination.

19 A Okay.

20 Q You see that right next to each other?

21 A Okay. I'm just trying to be clear as to your  
22 explanations. I see the two checks, both marked January  
23 6th, 2011 to Verizon.

24 Q Okay. And we didn't know whether those were for  
25 personal phones or business phones, right? You wouldn't

1 know that from this entry?

2 A I wouldn't know, no.

3 Q You wouldn't know?

4 A No, I would not know.

5 Q So we put up all of his business expense, right?

6 A It is appearing in business expenses.

7 Q So even if it was Melissa Moreno's private cell  
8 phone, we still gave it a business expense?

9 A I don't know if it was Verizon's -- or, I'm sorry,  
10 Ms. Moreno's personal number or if it was the 800-  
11 number.

12 Q Right.

13 A I -- I don't know.

14 Q Neither do I.

15 A Okay.

16 Q So we gave it a business expense. Okay?

17 A Yes.

18 Q And if you look at Robert Costello, do you see that?

19 A Sorry, I'm looking for Robert Costello.

20 Q It's the next --

21 A Oh, there you go.

22 Q -- expense after the Quaint Oak Bank distribution.

23 A Yes.

24 Q All right.

25 MR. HIPPLE: Your Honor, objection. Can we



1 see the check of Robert Costello. He was an employee.

2 MR. BERKOWITZ: Your Honor, it's irrelevant to  
3 the questioning.

4 MR. HIPPLE: Well, he's --

5 MR. BERKOWITZ: The checks are in the books.  
6 They have the checks.

7 THE COURT: Overruled. You can bring it up if  
8 you want to bring up the check.

9 BY MR. BERKOWITZ:

10 Q And I'm going to ask you, let's go forward to page  
11 three.

12 A Yes.

13 Q And do you see -- now, you see a cost of goods sold.  
14 Do you see that?

15 A Yes.

16 Q About half-way down?

17 A \$127, Colonial Chemical.

18 Q Right. So Colonial Chemical sent them the bill for  
19 something, and they put it down as a cost of goods sold,  
20 right?

21 A Yes.

22 Q All right. Let's look down to the next expense,  
23 UPS.

24 A Yes.

25 Q A legitimate business expense. Put it as expense,

1 correct?

2 A That's what Mr. Geisser did, yes.

3 Q Okay. And then look down to the next distribution,  
4 U.S. Treasury?

5 A Yes.

6 Q And we saw that that was a payment for Brian  
7 Hipple's taxes. We put that down as a distribution.  
8 That's correct?

9 A If that's what you did, that's -- I'm following you,  
10 yes.

11 Q Okay. And we've got the OffNet Gateway, again,  
12 another expense. I would like you to go to page four.

13 A I have page four.

14 Q You see page four?

15 A Yes.

16 Q Okay.

17 MR. BERKOWITZ: So this is Exhibit E-2, page  
18 four of Mr. Geisser's report.

19 BY MR. BERKOWITZ:

20 Q And I would like you to go to the expense line. You  
21 see Verizon, Verizon again and PECO. PECO is the local  
22 electric company?

23 A Yes.

24 Q Okay. All expense?

25 A They're all classified as expenses.

1 Q Okay. And then, Melissa Moreno, distribution?

2 A Yes.

3 Q And this is what Mr. Geisser said he did, right, in  
4 terms of classifying things as revenue or expense or  
5 distribution or cost of goods sold?

6 A Yes, this is what he said he did.

7 Q Okay. Now, let's look at, under Melissa Moreno,  
8 drop to the next line under payee?

9 A Yes.

10 Q You see that XM-Satellite Radio?

11 A No. Oh, I'm sorry.

12 Q You see that? Paid by check --

13 A XM-Sat Radio?

14 Q -- \$159.83?

15 A Yes.

16 Q Okay. And do you see that that was listed as an  
17 expense for the business?

18 A Yes.

19 Q And perhaps that could have been somebody's  
20 satellite radio in their car, but we treated --

21 A I --

22 Q -- it as a business expense because it wasn't on the  
23 list of things to be included in distributions?

24 A -- I see it's expenses.

25 Q Now, I'd like you to go to page five.

1 A I'm at page five?

2 Q Yes.

3 (Pause in proceedings.)

4 Q Are you on page five, sir?

5 A Yes.

6 Q Okay. Now, if you go and look down the payee  
7 column?

8 A Yes.

9 Q Under -- you'll see, revenue; revenue; Melissa  
10 Moreno; then invoice?

11 A Yes.

12 Q You see the next one, royalties?

13 A Yes.

14 Q Now, you've heard Mr. Hipple testify that he  
15 received the royalties?

16 A I don't think I heard him testify to that.

17 Q Okay. If he received the royalties, we could have  
18 put that in distribution, correct?

19 A I don't know that to be the case.

20 Q Well, we would have had we known, all right, but we  
21 treated it as an expense.

22 A Okay.

23 Q Okay?

24 A It does say expense.

25 Q It does say expense. And if you look at the bottom,

1       there's Comcast Cable?

2       A     Yes, as an expense.

3       Q     And we -- again, we treated it as an expense. We  
4       didn't know if it was the home cable. Treat it as an  
5       expense.

6                 Now, if you'll go to the next page, page six?

7       A     Yes, page six.

8       Q     Again, you'll see the same, revenue; revenue; cost  
9       of goods sold; distributions?

10      A     Right, cost of goods sold, \$167.

11      Q     Right. Distributions?

12      A     Distributions, \$820.

13      Q     Same breakdown?

14      A     And, yes, there are expenses here, as well.

15      Q     And if you go to page eight?

16      A     I'm at page eight.

17      Q     By the way, in checking these out, in order to do  
18      your report, to critique Mr. Geisser's work, did you  
19      ever, at any point, look at things that were classified  
20      as expense or revenue or cost of goods sold and think or  
21      ask whether they may be misclassified?

22      A     Yes.

23      Q     Okay. So did you look at the Sirius XM Radio or the  
24      XM-Radio invoice and question whether that's legitimate  
25      or not?

1 A No, I didn't. And there was just nowhere to go with  
2 it. I don't know if he's paying advertising with it or  
3 if it's related to something entirely else. I just  
4 don't have any information with it.

5 Q Okay. And you didn't ask either?

6 A No, I didn't.

7 Q Okay. Because I have that in my car, and I don't  
8 consider it a business expense. It's in my personal  
9 car.

10 Right?

11 A I understand, yes.

12 Q These are things you could have checked?

13 A I could have, but they were in the expense category,  
14 and they were not part of the SDE calculations --

15 Q Right.

16 A -- so I wasn't concerned with them, yeah.

17 Q Okay. So you could have checked. You're critiquing  
18 the report, but there are things in here that you chose  
19 to ignore, because they were listed as expenses. And if  
20 we categorized them wrong, for example, the royalties,  
21 that would operate the other way, correct?

22 A It could.

23 Q That would be more distribution.

24 A I'd have to add up all the royalties and see whether  
25 or not the agreement was valid, because a royalty could

1 be an expense.

2 Q It could be.

3 A Yes.

4 Q And then, maybe, again, you said you're going to  
5 validate the agreement, the royalty agreement?

6 A No, no, the numbers. I would have to go through to  
7 see what the total royalties were --

8 Q Sure.

9 A -- listed on here, and we'd have to do more analysis  
10 with it.

11 Q We could do that, though. We had all the bank  
12 statements and everything, right?

13 A I'm told that you had these bank statements, yes.

14 Q Okay.

15 A And the checks, yeah.

16 Q We could have checked it.

17 A That's right.

18 Q Okay. And we could have -- if -- if you had seen a  
19 royalty -- did you ever see a royalty agreement?

20 A I don't recall right now.

21 Q Okay. Well, neither did I, so I'm just wondering if  
22 you had seen one that I hadn't seen.

23 Now, let's look at -- let's go forward. I  
24 don't want to belabor this anymore. If we could go to  
25 page ten? And I would like you to look down the right-

1 hand column, P&L Classification?

2 A Yes.

3 Q And you see a cost of goods sold?

4 A Yeah, I see it.

5 Q Okay. And -- and I think that's the first big  
6 invoice that -- that I saw during the year for the cost  
7 of goods sold. I may be wrong, but that's --

8 A Are we referring to the invoice or the paid check?

9 Q Well, I'm talking about the paid check.

10 A Okay.

11 Q Okay?

12 A Yeah.

13 Q So you were criticizing the fact that there were no  
14 costs of goods sold earlier in the year, and maybe they  
15 weren't -- they weren't anything that would fall into  
16 that category before that, correct?

17 A There doesn't seem to be any large costs of goods  
18 sold prior to this point, yes.

19 Q Okay. And I'd like you to look at Exhibit 21.

20 A Okay. I have Exhibit 21.

21 Q And if you turn -- let me make sure I've got the  
22 right page here -- on page 52.

23 A I have 52.

24 MR. HIPPLE: What exhibit? I'm sorry. I  
25 missed the exhibit.



1 MR. BERKOWITZ: 21. I want to make sure I get  
2 to the right page.

3 MR. HIPPLE: We're coming back to this  
4 section?

5 (Pause in proceedings.)

6 BY MR. BERKOWITZ:

7 Q Page 52?

8 A Yes, I'm at page 52.

9 Q Okay. And do you see there's an invoice?

10 MR. HIPPLE: Hold on for one minute, please?  
11 25? What exhibit?

12 MR. BERKOWITZ: Exhibit 21, page 52.

13 MR. HIPPLE: 21, page 52.

14 BY MR. BERKOWITZ:

15 Q And do you see the date on that invoice?

16 A The invoice date is March 11th, 2011.

17 Q Okay. And we looked at that other invoice, showing  
18 the shipments, where they -- where I had it by the  
19 bottles. And I'm going to tell you it was dated 3/11/11  
20 as our first number of bottles we got for the year, and  
21 you see the amount of that invoice?

22 A \$17,550.

23 Q And if you look at the check under the costs of  
24 goods sold on 4/4/2011, check number 181, a check in the  
25 same amount?

1 A Yes.

2 Q So the first shipment that they got in the year was  
3 paid on 4/4?

4 A Yes.

5 Q Under 30 days from the date of the invoice, and it's  
6 listed as cost of goods sold?

7 A Yes.

8 Q So there would be nothing nefarious in not having a  
9 Steel Seal charge under costs of good sold before the  
10 invoice came in, correct?

11 A Not necessarily. Well --

12 Q Okay.

13 A -- it wasn't nefarious. We're just talking about  
14 the timing of inventory --

15 Q Okay. And it --

16 A -- that even if this -- this invoice, which is dated  
17 3/11, and don't know when it was actually arrived or  
18 delivered -- but its running off inventory from the  
19 prior year, because this is your only invoice --

20 Q That's not the point I'm making, sir.

21 A Okay.

22 Q The point is that this was the first invoice of the  
23 year. We saw that on the record of shipments. And it  
24 was paid on 4/4/2011, and that's the first large cost of  
25 goods sold entry?

1 A Yes, I agree.

2 Q Okay. Thank you. I -- I could go through the rest  
3 of these exhibits and -- and establish the same thing.  
4 That was the methodology that Mr. Geisser described,  
5 isn't it?

6 A As to, he reviewed the payees and classified the  
7 various checks into the various buckets, and this is  
8 where they appeared, yes, that's what he said he did.

9 Q Okay. And that's how he got his distribution -- the  
10 distributions by going through every check?

11 A Yes, that's what he indicated, and I believe that's  
12 what he did.

13 Q Okay. Now, you were critical -- let's go the  
14 Exhibit E-2, to the front.

15 MR. HIPPLE: E-2?

16 MR. BERKOWITZ: E-2. Make sure I have the  
17 right one? Yes.

18 THE WITNESS: I am at E-2.

19 BY MR. BERKOWITZ:

20 Q Okay. And you pointed out the revenue for the year  
21 was \$1,153,389 -- I don't know if I got that --  
22 \$153,389.66, right?

23 A That's correct.

24 Q And you critiqued the report because you said that  
25 number that Mr. Geisser got from the bank records was

1 different than in Exhibit B?

2 A Yes, I believe I made that statement.

3 Q Now, Exhibit B --

4 A I'm sorry.

5 (Pause in proceedings.)

6 THE WITNESS: I have Exhibit B.

7 BY MR. BERKOWITZ:

8 Q Okay. And that's from the tax return?

9 A Yes, it is.

10 Q So that is the tax return listing of revenue,  
11 correct?

12 A It's how it's scheduled, Schedule C.

13 Q Right. And we have no backup behind that to prove  
14 whether that's right or wrong, do we? That's just self-  
15 reported?

16 A It is -- I mean, there's a signed return. I thought  
17 they had a tax preparer, but, yes, it's --

18 Q It's just from the report. That's all we know?

19 A That is correct.

20 Q And Mr. Geisser's numbers came from the checks?

21 A Yes, that's correct.

22 Q Okay. And there's a slight variance between what's  
23 on the tax return and what Mr. Geisser found on the  
24 checks, correct?

25 A Yes.

1 Q And looking at this, you can't tell if the Steel  
2 Seal Pro record of a tax return is correct, can you?

3 A Can I tell from this?

4 Q Yeah.

5 A No.

6 Q Okay. And at least on Mr. Geisser's, you can see  
7 every entry that constituted revenue?

8 A I can see every entry, that's right.

9 Q That's right. So, yeah, maybe one's right; maybe  
10 one's wrong. Mr. Geisser's is based on the tax return.

11 A Well, one's also cash basis, and I'm not clear as to  
12 what one it is.

13 Q Well, we're not talking about any cash basis, and  
14 we're not talking about a different year period.

15 A Well, it is relevant.

16 Q We're talking about tax year.

17 THE WITNESS: Your Honor, can I answer this  
18 question?

19 MR. BERKOWITZ: There's no question.

20 THE COURT: Okay. You can answer it.

21 THE WITNESS: All right. What Mr. Geisser did  
22 was take a look at the bank statements, so he had cash  
23 records, so it's on a cash basis. The tax returns could  
24 be on an accrual basis.

25 BY MR. BERKOWITZ:

1 Q You don't know?

2 A I don't know.

3 Q Okay.

4 A But I know there could be receivables. I know that  
5 there could be open invoices. There could be a bunch of  
6 things going on. There could be some deposits in  
7 transit. There are things that are going on here. So  
8 before it really gets discounted, when you say there's  
9 no difference, because this is cash, and it's absolute,  
10 it's not.

11 Q No, it's not.

12 A Okay.

13 Q But -- but there's nothing nefarious nor unusual in  
14 there being a slight variance, is there?

15 A A slight variance, no.

16 Q Okay. And as a matter of fact, I think we saw, in  
17 2011 from our analysis of the number of bottles they  
18 purchased, that they should have been -- well, it could  
19 have been \$2,000,000 in revenue, correct?

20 A That's what the math indicates, yes.

21 Q And we have -- we only have bank records from one  
22 bank. We don't know what else is out there, correct?

23 A That's correct.

24 MR. BERKOWITZ: Your Honor, I think I'm almost  
25 done, if I could just have a couple of minutes to just

1 look through my notes?

2 THE COURT: Sure.

3 (Pause in proceedings.)

4 BY MR. BERKOWITZ:

5 Q Now, you would agree with me that Mr. Geisser dealt  
6 with all the information that he was provided with?

7 A I don't know if he used all the information he was  
8 provided.

9 Q Well, he told you he was provided with the bank  
10 records --

11 A Yes, that's correct.

12 Q -- and the checks?

13 A Yes, that's correct.

14 Q And he used those?

15 A Yes. Apparently he did, yes.

16 Q Okay. And he used them on the Wachovia Bank when we  
17 subpoenaed the records, correct?

18 A Yes.

19 Q And he worked from the First National Bank for Steel  
20 Seal Pro?

21 A I believe for Wachovia, he relied on -- and I'll  
22 read his footnote.

23 Q Well, that's okay. He relied on the checks he got.  
24 That's what he stated, isn't it?

25 A No, he didn't say that. He said he relied on -- I

1 thought it was in D. 2010 information is based on a  
2 summary prepared by the client from records for  
3 Wachovia.

4 Q That was not all he testified to. He said, I  
5 provided him a summary, and he didn't consider that  
6 adequate, and he went and reviewed all the bank records.

7 A I think he did review the bank records, but --

8 Q All the bank records.

9 A -- he didn't prepare part of this, so --

10 Q No. No, I -- I provided a summary of checks that  
11 were paid, all the checks that are in these binders  
12 here.

13 A Okay. And that's why --

14 Q It was not adequate for --

15 A -- the format of E-1 is different than --

16 Q -- what he does, right?

17 A I'm sorry?

18 Q It's not adequate for what he needed to do?

19 A Well, E-1 is different than E-1 and E-3, the way the  
20 format is, even though he's trying to accomplish the  
21 same thing, and I assume that that's what had happened  
22 that the format was different, because this was --

23 Q He used all the records he had.

24 A I believe he used all the records that he had.

25 Q And he -- he could have done a better job -- I don't



1 want to say better -- but had he gotten business  
2 records, he would have had more complete information,  
3 correct?

4 A Business records, as in?

5 Q Business records. Invoices, receipts, things that  
6 every business keeps?

7 A Yes, he would have --

8 Q Okay.

9 A -- more information.

10 Q Yeah, he'd have more information.

11 A Yes.

12 Q You could have got that information from your  
13 client, couldn't you have?

14 A I may have, but I didn't ask for it.

15 Q Okay. You could have.

16 A I was -- I'm a rebuttal witness. I didn't need it.

17 Q So they didn't -- well, so you decided you didn't  
18 need it to be a rebuttal witness?

19 A That's correct.

20 Q Okay. And in your report, would it be fair to say,  
21 yours is just a critique of Mr. Geisser's report?

22 A It is a critique of Mr. Geisser's report.

23 Q Okay. And you critiqued Mr. Geisser for doing a --  
24 I want to make sure I get this right -- a calculation of  
25 value, instead of an opinion of value, is that right?

1 A Yes.

2 Q Okay. And the opinion of value is the one that  
3 requires more extensive records?

4 A Yes, it does.

5 Q Okay. Now, you could have done an opinion of value,  
6 couldn't you?

7 A I didn't try to do an opinion of value, so I don't  
8 know if I could have done one or not.

9 Q You could have asked for records and done it if you  
10 wanted.

11 A I can't make that assessment from here.

12 Q Well, you know how to do it, right?

13 A Absolutely.

14 Q You're qualified as an expert to render an opinion  
15 of value?

16 A Yes, sir.

17 Q And you're also qualified as an expert to provide a  
18 calculation of value?

19 A Yes.

20 Q Under the Guidelines of the AICPA?

21 A Correct.

22 Q So what you could have done is, you could have come  
23 back -- Mr. Geisser gave us a value of Steel Seal --

24 MR. HIPPLE: Objection, Your Honor. He was --

25 MR. BERKOWITZ: -- the product --

1 MR. HIPPLE: -- he was hired for this specific  
2 job, okay, to counteract their expert witness. Okay.  
3 Now, we're going down a totally different road.

4 THE COURT: Overruled.

5 MR. BERKOWITZ: I wish I had a court reporter  
6 so I could ask her to read it back, but I'll try and  
7 figure out where I was.

8 THE COURT: He -- he could have calculated an  
9 opinion of value.

10 BY MR. BERKOWITZ:

11 Q You could have done, based on all of the information  
12 Mr. Geisser provided and had, you could have done your  
13 own calculation of value?

14 A I don't have a use for a calculation of value.

15 Q You could have done it. Whether you have a use for  
16 it or not, you could have done it?

17 A I could have done it.

18 Q You could have. And Mr. Geisser came up with a  
19 value, he said, "Steel Seal, the product, generates this  
20 amount of money, and this amount falls into the pockets  
21 of the owners. And I value that stream of revenue from  
22 the product, Steel Seal, at 1.75 million dollars plus  
23 the value of the inventory that Mr. Hipple got."

24 That's what he testified to, correct?

25 A I think he testified that he would add the value of

1 the inventory, but his report doesn't reflect that.

2 Q Right. And he did it during his deposition  
3 testimony. You heard it when we talked about it. We  
4 did a calculation. I think we did this with Mr. Hipple  
5 -- this is Exhibit P-31 -- that the inventory had a  
6 value that Mr. Hipple got of \$246,000 that you add on  
7 top of the 1.75 million.

8 A Well, I think we disagreed, because on E-2, he's  
9 already capturing the sale of this inventory in 2011.

10 Q He's doing a valuation?

11 A He is.

12 Q And he's doing a valuation as of October 13th, 2010,  
13 when the transfer took place. Now --

14 A No, sir, he's going past October 10th, 2013.

15 Q Yes. So that he can go and say, this is the value,  
16 because he had the same business. You heard him testify  
17 that the pattern of activity in SCIX was identical to  
18 the pattern of activity in Steel Seal Pro, and it was  
19 sold by the same people, on the same website, doing the  
20 same exact thing, how money just went into a different  
21 bank account. That's what he testified to. Yeah, it  
22 went past the date, because we had no information from  
23 before. He valued it as of that date, and he said, when  
24 you value as of that date, this gets added on top. That  
25 was the value of the stream of revenue, and this gets

1 added on top of it.

2 A I heard him testify to that; I disagree.

3 Q That's fine. You can disagree.

4 A An SDE calculation is backward looking. It looks to  
5 a three to five year history.

6 And so you avoid the problem of this inventory  
7 double-counting, but when you go forward, as he did do,  
8 he looked at 2011/2012, his inventory sales were  
9 captured, and they're in there.

10 Q So you could have done that and come up with a  
11 number. Instead of Mr. Geisser's 1.75 million, you  
12 could have done your own evaluation, come back and done  
13 a better job and come in here today and testified, no,  
14 that stream of income is not worth 1.75 million; it's  
15 only worth \$5,000. You could have done that?

16 A I wasn't asked to do that.

17 Q You weren't asked to do that. Okay. Did you hear  
18 Mr. Hipple testify he paid \$2,000,000 for the patent?

19 A No, I was not present for his testimony.

20 MR. BERKOWITZ: I have no further questions.

21 THE COURT: Thank you.

22 MR. HIPPLE: I have rebuttal? I --

23 THE COURT: Redirect.

24 MR. HIPPLE: Oh, redirect. Okay. I'm not so  
25 certain about a question, but I'm going to ask it.

REDIRECT EXAMINATION

BY MR. HIPPLE:

Q Okay. In reference to cost of goods, right, okay?

A Yes.

Q Is that something that should be identified all the way through, if there are costs of goods?

A I'm sorry. I'm not following your question.

Q In other words, my impression of costs of goods are up here, okay, after -- after the revenue.

A Yes.

Q And then we get a number, and then we go from there, right?

A Yes.

Q Okay. So they only show cost of goods -- oh, and there goes my page -- in an area of buying chemicals, correct?

A Yes.

Q If I remember correctly, that's what he did. So magically, somehow or other, the bottles came into Colonial Chemical by some magical form and nobody paid for them, correct?

A I'm sorry. I'm not following you.

Q Okay. If we're selling chemicals, right, and his opinion is, the only cost of goods is, is what we pay for Colonial Chemical. That is for the chemical,

1       itself.

2       A     Right.

3       Q     There's bottles; there's caps; there's boxes;  
4       there's inserts; there's tapes; there's labels. Okay.  
5       They're all a part of cost of goods, correct?

6               MR. BERKOWITZ: I'm sorry. I'm going to  
7       object. There is cost of goods sold, and there was  
8       expenses. And I think accountants differentiate between  
9       the two. They all wash out, Your Honor. Some people  
10      consider cost of goods sold when you sell a product like  
11      Steel Seal, the cost to acquire the bottle. The other  
12      things are treated as expenses.

13             THE COURT: So what are you objecting to, the  
14      way he's phrasing -- you're objecting to the way he is  
15      phrasing the --

16             MR. BERKOWITZ: I mean, I'm objecting to the  
17      characterization of the report that it doesn't include  
18      those other expenses. They're included as expenses in  
19      the report.

20             THE COURT: Overruled. You may ask it.

21             MR. HIPPLE: What? What --

22             THE COURT: Re-ask the question.

23             MR. HIPPLE: A new question or he answers?

24             THE COURT: Do you know the question? Do you  
25      understand, Mr. Pederson?

1 THE WITNESS: I'm sorry. I'm a little bit  
2 lost. I understand where I think you're going.

3 BY MR. HIPPLE:

4 Q Under cost of goods, there's more than just the  
5 chemical cost?

6 A Yes, there can be more than just the raw material  
7 cost, correct.

8 Q That the \$1.50 -- the \$1.50 that's been expressed  
9 here, okay?

10 A Yes.

11 Q What about the bottle caps, the labels, the bottles,  
12 the boxes, the insert, the tape, okay, the shipping, the  
13 freight, okay, to bring all this stuff in and also to  
14 send it out is part of cost of goods, correct?

15 A Part of it's cost of goods sold; part of it is  
16 expenses from what you just described.

17 Q Okay. Then --

18 A For example, shipping would not normally --

19 Q -- the freighting -- the freight would be the  
20 expense part, correct?

21 A Your shipping out would normally be an expense.

22 Q No, I'm not talking about shipping out. I'm talking  
23 about shipping four skids to England, okay? That would  
24 be shipping, cost of goods?

25 A Shipping, if -- if you're drop-shipping to England,



1       that would still be an expense of shipping for you.

2       Q    Okay. Fine. All right. But the other things are  
3       cost of goods?

4       A    They can be.

5       Q    Okay.

6       A    It -- it just depends on a couple different things.

7       Q    All right. Did you notice anywhere in here that  
8       there was any Federal tax paid or any FICA paid or any  
9       Social Security? In any of these checks, anywhere,  
10      throughout this whole --

11      A    I didn't actually review --

12      Q    -- two years?

13      A    -- the checks, but I did take a look at Mr.  
14      Geisser's exhibits, and there are checks to the U.S.  
15      Treasury.

16      Q    Okay. But I mean, you know, I'm talking more about  
17      checks that are paid out to the Federal Government for  
18      Federal taxes that are taken from people's wages every  
19      two weeks or something of that nature --

20      A    No, I didn't see that.

21      Q    -- that are paid on a monthly basis?

22      A    No, we didn't see the recurring every two weeks or  
23      -- or monthly.

24      Q    Okay. Sir, that -- would that, then, benefit that  
25      the employees -- "employers", not employees, but the

1 workers are subcontractors?

2 A They could easily be subcontractors.

3 Q Somebody's doing the work, right?

4 A Presumably, so.

5 Q You don't see any Federal taxes going out, do you?

6 A Not of the nature you're describing.

7 Q Okay. So therefore, somebody must be subcontracting  
8 in order to get the job done, correct?

9 A The job seems to be getting done. The revenues are  
10 coming in.

11 Q Well, yeah, yeah. I mean, I'm -- I'm sure that SCIX  
12 or Steel Seal Pro didn't have one employee, Brian. I'm  
13 sure Brian didn't do all the work. Okay. So basically,  
14 there's subcontractors in here, right?

15 A There could be subcontractors --

16 Q Right.

17 A -- in here, yes.

18 Q Okay. So, like, Robert Costello, would be a  
19 subcontractor?

20 A I think he was listed in Exhibit E-2.

21 Q Melissa would be a subcontractor?

22 A If she was working, then --

23 Q Well, apparently, she says she was working. The  
24 only point I think she said that she wasn't working was  
25 when the company moved from the house to the office.

1       A    If she was working, then she would be an expense to  
2       the business.

3       Q    Pardon me?

4       A    I said, if she was working for the business, she'd  
5       be an expense to the business and not a distribution.

6       Q    She would be an expense?

7       A    Yes.

8       Q    Yeah, he put her in another category.

9       A    Yeah, he put her in distributions.

10      Q    As distributions?

11      A    Yes.

12      Q    He put her under distributions, correct?

13      A    Yes.

14      Q    But it could possible -- very possible -- Melissa,  
15      because we don't have her tax returns in front of us.  
16      We don't know how she filed or if she filed the taxes  
17      for the money she received and paid taxes on the money  
18      afterwards, similar to what, I believe, Brian did.  
19      Okay. So nobody has the answer to that, but again,  
20      assuming somebody was doing the work, we had to have  
21      workers, right?

22      A    I would assume you had to have workers.

23      Q    All right. Let me bring your attention to these,  
24      and to me, this is documentation that he has in his  
25      books, and that his expert witness had. And I think

1 maybe you're familiar.

2 MR. HIPPLE: I could be totally, wrong, Your  
3 Honor, okay?

4 THE COURT: Okay.

5 BY MR. HIPPLE:

6 Q So let's start with judgment notes, P-26.

7 MR. BERKOWITZ: I'm sorry, that was?

8 MR. HIPPLE: P, Paul-26.

9 MR. BERKOWITZ: P-26.

10 MR. HIPPLE: 27, 28 and 29.

11 (Pause in proceedings.)

12 MR. HIPPLE: I'm about to be as fast as I can,  
13 Your Honor. I'm not going to take hours.

14 THE WITNESS: I am at P-26.

15 BY MR. HIPPLE:

16 Q Okay. And can you tell me what that is?

17 A It indicates, judgment note, \$88,000.

18 Q And that's a loan basically, right, correct, a  
19 liability to the corporation?

20 A I'll have to take a look. I haven't read through  
21 it.

22 (Pause in proceedings.)

23 A Yeah, it appears to be a demand note from JC  
24 Consulting --

25 Q All right.

1 A -- I'm sorry, Consultant and Leasing Corporation.

2 Q And then there is three more notes that equal,  
3 probably, somewhere in the area of \$500,000 total, which  
4 would be a liability, is that correct?

5 A It would be a liability.

6 Q Okay. So Mr. -- what's his name, the other expert?

7 Excuse me for my --

8 MR. BERKOWITZ: Mr. Geisser.

9 BY MR. HIPPLE:

10 Q Mr. Geisser never addressed that issue, is that  
11 correct?

12 A No, he -- he did not.

13 Q He didn't address it? It was in the books.

14 A It does not appear in his report.

15 Q But, I mean, it's in the books. The documents are  
16 here. Okay. He never addressed it, right. Okay. How  
17 about, let's go to P-127 and P-128. Or no, skip that  
18 one for right now.

19 Okay. Let's go to P-9.

20 MR. BERKOWITZ: P-9.

21 MR. HIPPLE: I believe P-9.

22 THE WITNESS: I'm at P-9.

23 BY MR. HIPPLE:

24 Q Is that -- what is that document?

25 (Pause in proceedings.)

1 A I have P-9.

2 Q Is -- is that a loan document?

3 A It's not a loan document. It's a -- it looks like  
4 an amortization schedule.

5 Q Okay, an amortization --

6 A So it might be part of an exhibit to a loan  
7 document.

8 Q -- of -- of dollars, right?

9 A I'm sorry?

10 Q Okay. But, basically, that is a loan document in  
11 the amount of \$210,000, correct, or 200 and --

12 A The principal starts off at 130.

13 Q This is on the books of --

14 A And then it looks like in November --

15 Q The third page. Could you just hold onto the third  
16 page?

17 A -- there's an additional -- oh, I'm sorry. I see,  
18 yes, the last number reflected in November of 2010 is  
19 \$211,588.61.

20 Q Okay. Now, again, this information was in the book,  
21 and this is a liability. And nothing was done with it?

22 A No, Mr. Geisser did not include it in liabilities.

23 Q So, now, we're up to \$700,000, a little over  
24 \$700,000, right?

25 A Yes, the 500 earlier, and the 211, here.

1 Q Yeah, yeah, so now, we're up to around \$700,000.

2 Okay. Now, we want to look at P-132.

3 MR. BERKOWITZ: P-132. That -- that's the  
4 chart?

5 MR. HIPPLE: I'm not sure.

6 MR. BERKOWITZ: I think it is.

7 BY MR. HIPPLE:

8 Q And it's off of an amortization schedule of a loan  
9 to Teresa?

10 A Yes, I have P-132.

11 Q And I think -- if you would look at the date,  
12 October -- what would it have been, 2012? Is this where  
13 we're -- when did this lawsuit start, 2010? October,  
14 2010.

15 THE COURT: The lawsuit started in '12. You  
16 filed in '12.

17 MR. HIPPLE: Okay. The lawsuit --

18 THE COURT: This Federal lawsuit.

19 MR. HIPPLE: Huh?

20 MR. BERKOWITZ: The Federal lawsuit.

21 THE COURT: This Federal lawsuit was 2012.

22 MR. HIPPLE: Okay.

23 BY MR. HIPPLE:

24 Q So if you go to 2012 --

25 A Yes?

1 Q Okay. What is the balance there?

2 A Sorry. I'm trying to read through this, because  
3 there's an entry here that follows. But in September of  
4 2012, \$389,520.53.

5 Q Well, skip that, because they got \$53,000.

6 A Exactly.

7 Q Add the \$53,000 back into it, okay?

8 A Well that'll put you pretty close to that.

9 Q Almost \$400,000, would you agree?

10 A About 390.

11 Q Okay. So we were at \$700,000 -- a little over  
12 \$700,000. Now, we've got another \$400,000? That puts  
13 us at \$1.1?

14 A Yes.

15 Q Liability on the books that nobody paid attention  
16 to?

17 A It doesn't appear in Mr. Geisser's report.

18 Q They just looked at the good side, and they didn't  
19 look at the bad side, basically, right?

20 A That was his approach.

21 Q Okay. That's the point I'm trying to make is, his  
22 approach was what he was told to look at, and he wasn't  
23 told to look at liabilities, and the liabilities are  
24 there. I mean, they're clear on their face. They're in  
25 the -- they're in the documents.



1                   So what kind of report would you consider  
2                   that, when a person knows that there's liabilities, and  
3                   he completely ignores them? Shouldn't that report be  
4                   thrown out?

5           A    Well, I think he --

6           Q    I mean, a million-two?

7           A    I think we all concluded he did not value 100  
8                   percent interest in the company or the company as a  
9                   whole.

10          Q    But I mean, yeah, he looked at the company to get it  
11               up to one point -- \$1,175,000 using the highest  
12               calculator possible, okay, that the book -- that the  
13               industry allowed to get it up to that, okay? All right.

14                   Okay. Let's go to American Express.

15          A    Do you have an exhibit reference?

16          Q    Yeah, let me give you one. Okay. Okay. Volume  
17               III, let's go to P-109.

18                   MR. BERKOWITZ: I'm sorry, Exhibit 109?

19                   MR. HIPPLE: Exhibit P-109 -- P-109.

20                   (Pause in proceedings.)

21                   MR. HIPPLE: I think I do better sitting down,  
22               because there's not much room here.

23                   THE WITNESS: P-109?

24                   MR. HIPPLE: Yeah. I'm going to have to do  
25               this, okay, so I can read.

1 THE COURT: You can sit down, if you want.

2 MR. HIPPLE: I think I can do it. I get too  
3 theatrical up here.

4 THE WITNESS: I'm at P-109.

5 BY MR. HIPPLE:

6 Q Pardon me?

7 A I said, I am at P-109.

8 Q Okay. If you look under the name -- after the name,  
9 half-way down the page, Craig Huck. Okay. Okay. And  
10 if we start --

11 A Yes.

12 Q Okay.

13 MR. HIPPLE: And, Your Honor, this is -- I  
14 have personal knowledge of what I'm about to say. So if  
15 I --

16 THE COURT: You can't do it now. You have to  
17 testify.

18 MR. HIPPLE: Okay.

19 THE COURT: Okay?

20 MR. HIPPLE: All right. Okay.

21 THE COURT: That's like if you were the  
22 lawyer, and you're lawyer came up and said, I want to  
23 testify; I want to say something. He can't do that --

24 MR. HIPPLE: All right.

25 THE COURT: -- or she can't do that.

1 BY MR. HIPPLE:

2 Q If you look -- if you look after his name, you'll  
3 see, stamps, press guard --

4 A Yes.

5 Q -- U.S. postage --

6 A Yes.

7 Q -- U.S. postage, Google. You understand what Google  
8 is in a business, to advertise through Google?

9 A One can advertise through --

10 Q With the website?

11 A -- Google, yes.

12 Q Pardon me? Websites -- all websites go through  
13 Google, correct, a majority of them anyway?

14 A I don't know if all -- okay, I would agree.

15 Q Grasshopper could be a phone system. Okay. Yahoo,  
16 another one similar to Google, okay, U.S. Post Office,  
17 okay. Well, this National Position, if they would have  
18 looked it up on the Internet or taken the time to see  
19 what the company is, they would see that that's a --  
20 like an SEO company that does Internet, takes care of  
21 your Internet. Google, post office. Okay. Now, I'm on  
22 the next page?

23 A Yes.

24 Q Yahoo, USP, Google, USP, Google. XFax, that's a  
25 business expense. Okay. Yahoo. Earth Skater. I

1       happen to know -- I think that if we had looked it up on  
2       the Internet, you would out that that is a person that  
3       takes care of e-mails. Google, post office, post  
4       office, Google. Okay, and up. So therefore, all of the  
5       records of American Express have been classified, how?  
6       I forget what the word --

7       A    I believe they've put all of these into  
8       distributions.

9       Q    Distributions. Okay. What I've shown you so far,  
10       just in that set of American Express records, where  
11       would you put them, from the knowledge you just  
12       received? Would you take them out of distribution?

13       A    I would question these, because of the amounts, and  
14       because of the headings here.

15       Q    But, again, if you found out that they were  
16       legitimate expenses, okay, advertising expenses and  
17       things like that. You would definitely take them out of  
18       distribution, right?

19       A    I'd -- in terms of an SDE calculation or a  
20       determination, these would be considered -- if they were  
21       business expenses, they would not be distributions.

22       Q    Right. That's what -- okay. So basically, you're  
23       answering my question that they would not be  
24       distributions. Okay.

25               If you can turn to Exhibit B in the -- oh,

1 God, I don't know what page that -- I'm sorry -- 31,  
2 P-31, Exhibit D.

3 MR. BERKOWITZ: Is that Mr. Geisser's report?

4 MR. HIPPLE: Yes.

5 (Pause in proceedings.)

6 THE WITNESS: I'm at Exhibit D.

7 BY MR. HIPPLE:

8 Q Okay. Now, I'm not certain, but A&C was -- you  
9 know, that money was paid to me, so that goes back in,  
10 is that correct, even though it was money that belonged  
11 to Complete Group or the sale of the products? Does  
12 that go back into distribution?

13 A I need to understand more about A&C Building before  
14 I could tell you that.

15 Q Okay. Well, A&C Building was just a -- at the time,  
16 it -- Complete Group did not have a checking account.  
17 Okay. So the money that was being generated from profit  
18 was going into A&C Building and Industrial Maintenance.  
19 Now, would that be distribution or would that be  
20 expense.

21 A Was that by agreement?

22 Q Yes, by a license agreement.

23 A So this is a license fee?

24 Q Pardon me?

25 A This is a license fee to sell the product?

1 Q Yes. It's a licensing fee.

2 A If it's a license fee to sell the product, then it  
3 would no longer be a distribution, because any buyer  
4 would have to pay this fee.

5 Q So it would go into --

6 A So it's a business expense.

7 Q -- distribution or it would not?

8 A It would not. It's a business expense.

9 Q It would not, right? Well, he had showed you the  
10 licensing fee earlier today. Okay. And the license fee  
11 was between Steel Seal Pro and Complete Group. Complete  
12 Group didn't have a bank account, for which they know,  
13 and they agreed to -- if there is any objection, let me  
14 know -- that they agreed to --

15 A Well, the real underlying --

16 Q -- that A&C, it was okay to put the money in A&C  
17 because that's the only account that I had.

18 A Well, let me be clear, if someone were to acquire  
19 SCIX or Steel Seal Pro, and if they would be obligated  
20 to pay this fee on an ongoing basis, then, yes, it  
21 wouldn't be a distribution, because anybody stepping  
22 into your --

23 Q No, it wasn't a distribution. It --

24 A -- your shoes --

25 MR. BERKOWITZ: He's got to let the witness

1 answer the question you just asked him.

2 THE WITNESS: Anybody stepping into your  
3 shoes, it would be an expense --

4 MR. HIPPLE: They weren't step --

5 THE WITNESS: -- because they would have to  
6 pay it, as well.

7 BY MR. HIPPLE:

8 Q Okay. It wasn't being stepped into the shoes, okay?  
9 Basically, they were Steel Seal Pro --

10 A No, no, that was an analogy. If -- if --

11 Q Okay.

12 A -- you were to sell the business.

13 THE COURT: He's supporting your position.

14 MR. HIPPLE: Oh, okay. All right. Then I'll  
15 stop.

16 THE COURT: He's saying it would be an  
17 expense.

18 THE WITNESS: Correct.

19 MR. HIPPLE: It would be an expense.

20 THE COURT: And a new buyer -- a new buyer  
21 would have to pay the licensing fee.

22 THE WITNESS: Exactly.

23 MR. HIPPLE: All right. Okay.

24 BY MR. HIPPLE:

25 Q Okay. So we know, today, that that's an expense.

1 Okay. The two \$160,000 and \$160,000. Okay. We also  
2 know that a majority, a large, large majority of  
3 American Express is an expense. Okay. All right.

4 MR. BERKOWITZ: I'm going to object to the  
5 conclusion in the testimony.

6 MR. HIPPLE: What's your objection? I just  
7 went through it.

8 THE COURT: All right. I'll sustain the  
9 objection. That's really for me the fact-finder to make  
10 that decision.

11 MR. HIPPLE: Okay. Okay.

12 BY MR. HIPPLE:

13 Q But what I'm saying is that the records that we have  
14 in front of us, the American Express records, should be  
15 taken as a whole because it has a different name on the  
16 credit card, okay, even though that credit card has been  
17 in effect forever, since 1974, and being used the same  
18 way.

19 MR. HIPPLE: And, Your Honor, basically, it  
20 has to do with the points. Okay? Go ahead? That's  
21 neither here nor there. Okay?

22 BY MR. HIPPLE:

23 Q Even though the credit card has a different name, it  
24 was the expense for Steel Seal Pro, using the credit  
25 card?



1 A If it's an expense of Steel Seal Pro, then it would  
2 not belong in distributions --

3 Q Okay, fine.

4 A -- and it would belong in expenses.

5 Q Thank you. Okay. All right. And then we talked  
6 about the fact of subcontractors. Okay. Because there  
7 was no Federal payroll taxes ever paid. Okay. No FICA,  
8 nothing. You never saw no -- no checks going out to  
9 FICA?

10 A We -- we saw a couple checks to the U.S. Treasury,  
11 but not --

12 Q Yeah, the Treasury. I'm talking --

13 A -- every two weeks or a month, no.

14 Q I'm talking about checks that are -- you're required  
15 to make on a monthly basis?

16 A Right.

17 Q Okay. Pay FICA and pay the Federal tax that you  
18 deduct from your employees. Okay. You didn't see that,  
19 right?

20 A I did not.

21 Q I didn't see it. Okay. Then if we go down to  
22 Melissa, it's a possibility that she could have been a  
23 subcontractor, being paid less to subcontract, but  
24 because that, I guess, would eliminate Steel Seal Pro  
25 worrying about workman's comp, general liability

1 insurance, matching FICA.

2 So if he would hire everybody as a  
3 subcontractor, that would be the person's  
4 responsibility, not the company?

5 A It would be, yes. That's right.

6 Q Is that correct?

7 A That's correct.

8 Q Okay. All right. So the possibility, okay, more  
9 than a possibility, but that Melissa could have been a  
10 subcontractor. So what we've got, we've got A&C;  
11 American Express; Melissa, okay; and Brian's salary does  
12 -- would belong in this category, correct?

13 A Yes, it would be.

14 Q Okay. And then, as far as Teresa, her interest  
15 would also belong in this category, correct?

16 A As I understand it, yes.

17 Q All right. Okay. And I'm not disputing these other  
18 things as far as Sovereign Bank is concerned and all,  
19 because Melissa made a statement on the stand that, yes,  
20 they were her mortgage companies. But what I am  
21 disputing is the things that I just said here, plus the  
22 one-million-two of liability that was right -- which is  
23 the most important part, okay, right in front of the  
24 expert witnesses. And he just totally ignored it, one-  
25 million-two of liability, clear -- very clear on it's

1 face liability. Okay. You agreed it's the liability,  
2 what I showed you?

3 A Yes.

4 Q Okay. Okay.

5 MR. HIPPLE: If you want to redirect, I'm sure  
6 you do, but I --

7 THE COURT: Recross.

8 MR. HIPPLE: Cross, okay.

9 THE COURT: And then he's -- then, we are  
10 finished with Mr. Pederson.

11 MR. HIPPLE: And then I can't, if you don't?

12 THE WITNESS: Thank you.

13 MR. HIPPLE: We're going to be here -- just  
14 4:00 for him today.

15 RECROSS-EXAMINATION

16 BY MR. BERKOWITZ:

17 Q I would like you, sir, to pick up Mr. Geisser's  
18 report again, Exhibit --

19 A I have it.

20 Q -- E-2.

21 (Pause in proceedings.)

22 MR. HIPPLE: E-2?

23 MR. BERKOWITZ: E-2, correct.

24 THE WITNESS: I'm at E-2.

25 BY MR. BERKOWITZ:

1 Q Do you see that, sir, and at page three of the grid?

2 A Page three --

3 MR. HIPPLE: Page three?

4 THE WITNESS: -- of the grid.

5 All right.

6 MR. HIPPLE: Page three, go ahead.

7 THE WITNESS: I am at page three of the grid.

8 BY MR. BERKOWITZ:

9 Q You see under payee, if you go down, UPS?

10 A Yes.

11 Q Do you see it was characterized as an expense?

12 A Yes.

13 Q Okay. Expenses are deductible, costs of goods sold  
14 are deductible. In terms of the bottom line, it doesn't  
15 matter which category you're in, does it?

16 A No, it would not.

17 Q Okay. And again, I'm not going to waste your time  
18 on this, if you'll go to page ten?

19 A I'm at page ten.

20 Q And you look under Pinnacle Freight Line?

21 A Yes.

22 Q Do you see that?

23 A Pinnacle Freight Line.

24 Q And -- and you see that's treated as an expense?

25 A Yes.

1 Q Now, you're an accountant. You're familiar with the  
2 fact that if somebody classifies someone as a  
3 subcontractor --

4 A Yes?

5 Q -- the employer does not pay a FICA contribution for  
6 that?

7 A Not normally, no.

8 Q Okay. So it's less money out of his pocket?

9 A It depends because sometimes contractors want more  
10 money.

11 Q But a subcontractor is going to pay his own FICA.  
12 And Social Security, FICA, other taxes that the employer  
13 might pay, as a result of the employment, aren't  
14 incurred by the employer?

15 A That's correct. That's a responsibility of the  
16 subcontractor.

17 Q Correct. And you also know that when you have an  
18 employee on your payroll, at least in Pennsylvania, you  
19 are required, once you have one employee, to pay  
20 worker's compensation?

21 A I'll take your word for it.

22 Q Okay. And that's another expense that an employer  
23 has?

24 A Potentially, yes.

25 Q And I am sure, as an accountant, you are familiar

1 with tests that the IRS has to determine who is an  
2 employee and who is a subcontractor?

3 A Yes, I'm aware of that.

4 Q And you are aware of the fact that often, people who  
5 are employees in every respect, they work; they report  
6 to work at given times at a certain place to do a  
7 specific job on a 40-hour week?

8 A Yes.

9 Q 52 weeks a year? Some employers consider treat them  
10 as subcontractors, right?

11 A They try to, yes.

12 Q Yes. And you would agree with me, the IRS does not  
13 agree with that, all of the time?

14 A That is correct.

15 Q And they'll treat them as -- they'll say, these are  
16 really employee, and you should be deducting their  
17 payroll during the W-2s, the W-4s and all the rest of  
18 it, correct?

19 A I think it's not only the IRS, but yes.

20 Q Okay. You are required to do that. And it's more  
21 expensive for a business to do that?

22 A It is.

23 Q It's a cost of doing business?

24 A Yes.

25 Q And when you obey the laws, you incur the cost. You

1 pay the worker's comp?

2 A Yes.

3 Q Okay. So if any of these people that are treated --  
4 let's -- let's look at Robert Costello. He's on page  
5 ten, so I can look at that. You see that, he's got a  
6 check of \$1,120?

7 A 1120, yes.

8 Q And it's treat as an expense?

9 A Yes.

10 Q Okay.

11 MR. HIPPLE: \$1,200.

12 THE WITNESS: No, 1,100 --

13 MR. BERKOWITZ: #1,120.

14 THE WITNESS: Yes.

15 BY MR. BERKOWITZ:

16 Q If he were an employee -- let's say he worked -- he  
17 -- his name appears many, many times in this set of  
18 documents.

19 A Yes, I believe so.

20 Q You saw that?

21 A Yes.

22 Q And if this is his job, working for Steel Seal Pro,  
23 and he's being paid as an expense, he -- he, then, may  
24 really be an employee?

25 A I don't have enough information, if he's working

1 five hours a week or 40 hours a week or anything else?

2 A He has a regular job. He's there every day. He's  
3 gotta be there, gotta work on the employer's terms,  
4 gotta follow the employer's instructions, doesn't get  
5 the chance to decide his hours, and all the tests that  
6 the IRS has. If that is, in fact, what Mr. Costello  
7 does, he might be an employee?

8 A He might be.

9 Q And, in fact, you would expect to see, for  
10 employees, paychecks?

11 A This is a very small business. It's hard to say --  
12 I can't guarantee that you're going to see W-2s and  
13 payroll, because this -- this could be a little bit more  
14 casual. Maybe one week, they're very busy. Another  
15 week, nothing for around Christmastime. I don't what  
16 the cycle of this product is, quite frankly, but --

17 Q You don't know?

18 A No, I don't know.

19 Q You don't know. But, we've seen nothing for  
20 employees, in the financial records that we've had  
21 access to.

22 A That's what I understand, other than these payments  
23 to individuals which you've identified.

24 Q And if we had gotten underlying records, we would  
25 have had that information?



1       A    I don't know what you would have had, because if  
2       these individuals are working on a contract basis, they  
3       just may be issued checks.

4       Q    And if they were employees being paid payroll, we  
5       would have gotten payroll records?

6       A    That's right.

7       Q    Okay. And we don't have it?

8       A    I don't think you have any payroll records.

9       Q    So -- so we took Mr. Costello, and we treated him as  
10      an expense. We didn't challenge that he wasn't working  
11      for the company.

12      A    I see that.

13      Q    He was treated as an expense?

14      A    Yes.

15      Q    Okay. And at the end of the day, it's not  
16      distributable cash flow?

17      A    That's correct. It went to Mr. Costello, and it's  
18      flowing through the business as an expense.

19      Q    Okay. So maybe we don't have a problem; somebody  
20      else might have a problem with the characterization of  
21      them as subcontractors or employees?

22      A    Somebody may have an issue with it.

23      Q    Yeah.

24      A    It depends on the circumstances.

25      Q    Right. And -- and of course, subcontractors would

1 be issued 1099s?

2 A They might be.

3 Q If they're a subcontractor on a regular basis,  
4 receiving a substantial amount of money?

5 A Yes.

6 Q They would be required to issue a 1099?

7 A That's correct.

8 Q And if we had gotten underlying records, we could  
9 have seen those.

10 A If -- if there were 1099s, you would have been able  
11 to see them, yes.

12 Q Okay. Now, you heard the accountant. He was here  
13 this morning.

14 He said he gave us all of the business  
15 records?

16 A I did hear him say that, yes.

17 Q Okay. And I'm going to tell you, I didn't get any  
18 employment records or 1099s or anything else.

19 You heard the same thing?

20 A I heard him say that he produced all the records. I  
21 haven't seen any 1099s.

22 Q Okay. Mr. Hipple asked you about the J&C notes. He  
23 asked you to look at those Exhibits 26, 27, 28 and 29?

24 A Yes.

25 Q You, personally, have no idea whether those are

1 judgments, correct? I think you said that?

2 A I believe you're correct.

3 Q Okay.

4 A I was just reading from the notes.

5 Q And you have no idea whether they're valid notes?

6 A We were aware of the \$211,000 that were appearing as  
7 an amount due on their books. I believe that came up in  
8 one of the depositions.

9 Q And -- and the accountant testified to the \$210,000?

10 A And he testified to it today, as well. I'm trying  
11 to think back in terms of the preparation of the report,  
12 though.

13 Q Okay. Now, Mr. Hipple asked you to look at  
14 Plaintiff's Exhibit 9. If you could just, for a second,  
15 pull that out?

16 A Yes, the amortization schedule.

17 Q Well, Exhibit 9, I -- okay. I'll call it -- I'll  
18 take that, an amortization schedule.

19 That's the one for Clement Hipple?

20 A Yes.

21 Q And you saw, we talked about that. And that's the  
22 one that shows the \$210,000 due?

23 A 211 -- oh, yes, 210,187 at the end of September.

24 Q And that was the -- that was the amount that was the  
25 basis for the October 5th promissory note --

1 A I believe --

2 Q -- that SCIX gave to Clement Hipple?

3 A -- I believe so, yes.

4 Q Okay. Now, I would like you to go to Exhibit 6.

5 A P-6?

6 (Pause in proceedings.)

7 A I'm at P-6.

8 Q Okay. You see P-6, and do you recall hearing the  
9 accountant testify that he also did this -- I'll call  
10 this -- you called it an amortization?

11 MR. HIPPLE: Objection, Your Honor. The  
12 accountant never told us Exhibit 6.

13 THE WITNESS: I was going to say, he had some  
14 documents up here, and it seemed there was some  
15 confusion as to which one he prepared, and which one  
16 somebody else prepared, and I couldn't see what he was  
17 looking at.

18 MR. BERKOWITZ: This -- I will tell you, this  
19 is the one I showed him, and he said, this was his  
20 record.

21 THE WITNESS: Okay.

22 THE COURT: Mr. Hipple, is there an issue with  
23 this?

24 MR. HIPPLE: Yes, because this is not the one  
25 the accountant was shown. He was shown my personal one,

1 and the one that they -- they created to carry forward.

2 THE COURT: Mr. Pederson?

3 MR. HIPPLE: No, the accountant --

4 THE COURT: Mr. Geisser's?

5 MR. HIPPLE: -- this morning. We're talking  
6 about Ira Krassan.

7 THE COURT: Oh.

8 MR. HIPPLE: He was shown two.

9 THE COURT: Right.

10 MR. HIPPLE: He was not shown this one.

11 MR. BERKOWITZ: I showed him this one, Your  
12 Honor, when I came back on cross-examination.

13 MR. HIPPLE: I disagree.

14 MR. BERKOWITZ: He identified it as --

15 MR. HIPPLE: I object.

16 MR. BERKOWITZ: -- done at the same time when  
17 he did the other one.

18 THE COURT: All right. I'll overrule the  
19 objection. Go ahead.

20 BY MR. BERKOWITZ:

21 Q Now, look at the top of this. You see it says,  
22 Teresa, Clem, JC.

23 Do you see that?

24 A Yes.

25 Q And this is Teresa?

1 A And this is Teresa, yes, I -- I read that.

2 Q Now, he gave us all his records that he had. He  
3 said he'd been doing the business for several years. He  
4 gave us all of them. And he had this one. This is  
5 Teresa, right?

6 A Yes, that's how it reads.

7 Q And he gave us Number 9; this is Clem?

8 A Number 9, does it say, this is Clem? It doesn't  
9 say, this is Clem, but it says --

10 Q No, this just says Clem Hipple. It's a little  
11 different.

12 A Yes.

13 Q Okay. And this -- this is a lot of information he  
14 had recorded over a long time, right?

15 A It's a different format, but if you're telling me it  
16 came from the same person, at the same time --

17 Q He testified that it was his document.

18 A Okay. I'm just -- just asking.

19 Q Yeah, one -- one was faxed, and one is not a fax.

20 A No, actually, that's not --

21 MR. HIPPLE: I still disagree.

22 THE WITNESS: -- what distinguishes them, but  
23 if you tell me they're fine, I'm --

24 THE COURT: Well, he didn't --

25 THE WITNESS: -- I'm not going to --

1 THE COURT: I remember the testimony. He  
2 was comparing this one to one that, I guess, Mr.  
3 Berkowitz --

4 MR. HIPPLE: This one here is the one that --

5 THE COURT: No, no.

6 MR. HIPPLE: -- that's Teresa's note.

7 THE COURT: This is the one I believe he  
8 prepared, but he was comparing it or there was some  
9 discussion with the one that Mr. Berkowitz prepared,  
10 130.

11 MR. HIPPLE: Because he prepared his own.

12 MR. BERKOWITZ: Your Honor, if you recall, he  
13 talked about the fact that he compounded the interest.

14 THE COURT: Right.

15 MR. BERKOWITZ: And we didn't compound --

16 THE COURT: You did simple, right.

17 MR. BERKOWITZ: -- the interest. And he  
18 showed more money loaned than we showed.

19 THE COURT: You went to a -- he went to a  
20 longer -- he went to a longer date or a more recent  
21 date. He stopped at '09.

22 MR. BERKOWITZ: Correct.

23 THE COURT: Right.

24 MR. BERKOWITZ: Because he didn't have more  
25 recent payments; we did.

1 THE COURT: Right. Okay.

2 BY MR. BERKOWITZ:

3 Q Now, it says here, JC, do you see that?

4 A We're back to P-6?

5 Q Yes.

6 A Teresa, Clem, JC, yes.

7 Q Okay. And he didn't produce one of these for JC.

8 A Okay.

9 Q Okay. Do you have any personal knowledge that there  
10 is any money due to JC Consultants other than those  
11 notes?

12 A Other than the notes?

13 (Pause in proceedings.)

14 MR. HIPPLE: Objection, Your Honor. They're  
15 part of the documentation that they submitted. They  
16 submitted the notes in their -- in their documentation  
17 that the notes were notes. They talked about the notes.

18 THE COURT: All right. Overruled.

19 THE WITNESS: Nothing's coming to mind.

20 BY MR. BERKOWITZ:

21 Q Okay. So the accountant doesn't have a record of  
22 it, and you don't know anything about it?

23 A Other than what I've described in my report, no.

24 Q Okay. You looked at Exhibit 109, the American  
25 Express bill.



1 Do you have that?

2 A I can get it.

3 (Pause in proceedings.)

4 A I am at 109.

5 Q Okay. And you see that's an American Express bill  
6 dated 1/23/2013? You see at the top?

7 A Yes, I'm just kind of looking at this thing.

8 Q It says, business gold card. It's the one that Mr.  
9 Hipple just showed you.

10 A Yes, I'm looking at it right now. I'm just making  
11 sure I'm lined up with your dates. I've got the please  
12 pay by.

13 Q And if you look at the page number on the top, it  
14 says 3 or 9.

15 A Oh, okay.

16 Q Are we on right pages?

17 A No.

18 Q I'm sorry.

19 A Now, I'm on 3 of 9. There you go.

20 Q Go -- go to page 3 of 9.

21 A Okay. I am on page 3 of 9.

22 Q Okay. And you see at the top, it says, Scientific  
23 Chemical?

24 A Yes, it says Scientific Chemical.

25 Q And then, it says Clement Hipple?

1 A Yes.

2 Q And then you see Craig Huck?

3 A Yes.

4 Q And you see of these entries that are listed,  
5 stamps, press guard, USPS postage, Google and the like?

6 A Yes.

7 Q I want you to assume for a second, but just for  
8 purposes of this question, that these are legitimate  
9 business expenses. Okay. Just for purposes of this  
10 question?

11 A Okay.

12 Q Based on this document, whose business expenses are  
13 they? Are these for SCIX?

14 A We don't know whose business expenses these are,  
15 from looking at this document.

16 Q Are they for Steel Seal Pro?

17 A I don't know.

18 Q Are they for Scientific Chemical?

19 A I don't know.

20 Q Are they for -- well, this wouldn't be Brian's Muay  
21 Tai business, because that ended before. Are they for  
22 BBB Management Group?

23 A I don't know.

24 Q Are they for Complete Group?

25 A I don't know.

1 Q Are they for Steel Seal, LLC?

2 A Could be, but I don't know.

3 Q You have no idea, from this documentation, whose  
4 expenses they are, do you?

5 A Not from this document, no.

6 Q Did -- did you hear -- I believe he was sitting with  
7 Mr. Hipple, when he was -- when you were doing the  
8 questions with Mr. Geisser, he expressed some  
9 frustration that these questions cost him \$400,000?

10 A I heard him make a remark like that, yes.

11 Q Okay. And if he was saying he had spent \$400,000 on  
12 this litigation, would that surprise you?

13 A I don't know.

14 Q Your firm is expensive?

15 A Our firm -- I --

16 Q Reasonably priced for what you do --

17 A -- I was going to say --

18 Q -- but expensive?

19 MR. HIPPLE: Yeah, can we get him out of here,  
20 by the way, as soon as possible?

21 THE WITNESS: Actually, I'm involved with a  
22 large case right now, and we are the cheapest one in the  
23 bunch, so -- I'm sorry. I'm not following your  
24 question.

25 BY MR. BERKOWITZ:

1 Q But if I told you that that's -- that's an amount  
2 commensurate with my client's legal fees?

3 A I've only been a part of this litigation so I can't  
4 comment to how much and how much has been going on in  
5 the background, that clearly a lot has happened.

6 Q Mr. Hipple had you look at this note, this -- this  
7 document 132?

8 A If you need me to read that, it's going to be a  
9 problem.

10 Q It's actually Exhibit 132 in the book.

11 A Okay.

12 Q Can you see that? I think you looked at this one?

13 A Yes, with Mr. Hipple. We just looked at it.

14 Q And if you look at the date of default, the amount  
15 of money that's due is \$338,600.29?

16 A You're pointing at November. The default date is  
17 November?

18 Q Well, it's actually October.

19 A That's what I thought.

20 Q That's when the default begins. The interest is  
21 calculated at default.

22 A At \$350,000, yes.

23 Q Right. So Mr. Hipple spent \$400,000 defending a  
24 \$338,000 note at the time. Would that be your  
25 understanding of what we just read here?

1 MR. HIPPLE: Objection, Your Honor. I don't  
2 know what that has to do with the case --

3 THE COURT: I'll sustain the objection.

4 MR. HIPPLE: -- what I spent --

5 THE COURT: I sustained the objection.

6 MR. BERKOWITZ: No further questions, Your  
7 Honor.

8 THE COURT: All right. You're excused, Mr.  
9 Pederson. Thank you.

10 THE WITNESS: Thank you.

11 (Witness excused.)

12 THE COURT: Mr. Hipple, it's 3:30, so we have  
13 another hour. Next witness. Do you need a break? I'm  
14 ready to go.

15 MR. HIPPLE: I could use a five-minute break.

16 THE COURT: All right. We'll take a five-  
17 minute break.

18 (Recess taken, 3:27 p.m. to 3:39 p.m.)

19 THE COURT: Please be seated, everybody. Mr.  
20 Hipple.

21 MR. HIPPLE: Yes. I'd like to call Teresa  
22 Concepcion.

23 THE COURT: Okay.

24 MR. BERKOWITZ: Your Honor, could I ask for an  
25 offer of proof? Not that he doesn't have a right to

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1 examine her, but she testified in her direct testimony  
2 that she had no knowledge of the fraudulent transaction  
3 that took -- that underlies this case.

4 THE COURT: I'm not --

5 MR. BERKOWITZ: And it was in her deposition  
6 -- not -- I mean, he's free to --

7 THE COURT: -- I'm not going to -- I'm not  
8 going to ask for an offer of proof. You may proceed.  
9 Go ahead.

10 MR. HIPPLE: All right. Thank you, Your  
11 Honor.

12 COURTROOM DEPUTY: Raise your right hand.

13 TERESA CONCEPCION, Plaintiff, Sworn.

14 COURTROOM DEPUTY: Please state and spell your  
15 last name for the record.

16 THE WITNESS: Concepcion, C-O-N-C-E-P-C-I-O-N.

17 THE COURT: You may proceed. Go ahead.

18 DIRECT EXAMINATION

19 BY MR. HIPPLE:

20 Q Can you hear me? Ms. Concepcion, can you hear me?

21 A I can hear.

22 Q Okay. All right. I need you to -- tab D-33 in the  
23 black books. No, in our books, the defendant.

24 A Yes.

25 Q Okay. Could you please turn to page 65.5.

1 A I have page 65.

2 Q Oh, is she ready?

3 THE COURT: Yes.

4 MR. HIPPLE: Okay.

5 BY MR. HIPPLE:

6 Q Yes. I'll read the question. "Who created the  
7 demand note?"

8 A Henry Van Blunk.

9 THE COURT: I think he wants you to read your  
10 answer at the deposition.

11 MR. HIPPLE: Answer.

12 THE COURT: Ms. Concepcion, so read the --  
13 page 65 --

14 THE WITNESS: Oh, number five.

15 THE COURT: -- so, "Who created the demand  
16 note," and your answer is?

17 THE WITNESS: "An attorney in Pennsylvania."

18 BY MR. HIPPLE:

19 Q No, it says here -- okay, right. Okay. Fine.  
20 Thank you.

21 And go to 65.5 -- wait a minute. I'm sorry.  
22 We have -- we need to go from there to 66.4. So it  
23 would be -- the next question is, "And who is that,"  
24 number nine and yours is ten.

25 A I don't know where you are.

1 Q 65, ten.

2 THE COURT: 65, line ten?

3 MR. HIPPLE: Yes.

4 THE COURT: The question is, "Who is that?"

5 And your answer is?

6 THE WITNESS: "I don't remember his name."

7 BY MR. HIPPLE:

8 Q Okay. All right. Question 12 -- all right, 66,  
9 one.

10 Okay. "What was it, here in Bucks County?"

11 A "Yes."

12 Q "Was it in the Newtown area?"

13 A "I don't really know. I know it was here in  
14 Pennsylvania."

15 Q "Is -- is it Henry Van Blunk?"

16 A "Yes, there is the name."

17 Q "And who -- did Henry Van Blunk represent you?"

18 A "Yes."

19 MR. BERKOWITZ: I'm going to object. Reading  
20 the deposition is not eliciting questions at trial.

21 THE COURT: Right.

22 MR. BERKOWITZ: We have the deposition. We  
23 can read it. If you want to impeach, that's fine.

24 THE COURT: Right. So, you have to ask your  
25 witness a question, and then if she says something



1 different in a deposition, you can read the deposition.

2 Okay?

3 MR. HIPPLE: Okay. Right. Okay.

4 THE COURT: We kind of went over this before,  
5 but go ahead.

6 BY MR. HIPPLE:

7 Q "And Mr. Van" --

8 THE COURT: Why don't you just ask her some  
9 questions and then --

10 MR. HIPPLE: Okay.

11 THE COURT: -- you know, if she says something  
12 that's not -- you feel is not what she said in the  
13 deposition, then you can ask her about the deposition.

14 MR. HIPPLE: Okay. Well, I'm going to just go  
15 back a little bit then.

16 BY MR. HIPPLE:

17 Q "And Mr. Van Blunk represented you?"

18 A "Yes."

19 Q "And you met him with -- in connection with the two  
20 judgment notes, right?"

21 A "That's correct."

22 Q "So the judgment notes are payable on demand,  
23 correct?"

24 A "Yes."

25 Q "Now, you have delivered that to Brian Hipple?"

1 A "No."

2 Q "And this letter in" -- I don't have the letter,  
3 that's the problem. Okay. You did have a letter from  
4 your attorney, is that correct?

5 A I don't know what you're referring to.

6 Q A letter that stated that Brian to sign the -- that  
7 he was in agreement with the promissory notes?

8 A I don't know what letter you're referring to.

9 Q The demand letter.

10 MR. BERKOWITZ: Your Honor, I'm going to  
11 object.

12 MR. HIPPLE: I'll pass. I'll go by it.

13 MR. BERKOWITZ: I'd like my objection to be  
14 heard. The notes and the judgments are recorded. They  
15 are docketed. We have the dockets in the court. We've  
16 had testimony and we have the dockets that show these  
17 notes have never been challenged.

18 To go back and recreate what happened before  
19 the notes is irrelevant. These notes are 12 years old.  
20 They're part of the record. Payments have been made.  
21 There has never been a challenge to the judgments. That  
22 is not an issue that is relevant to these proceedings.

23 THE COURT: What point are you trying to make?

24 MR. HIPPLE: I'm trying -- I'm trying to get  
25 the point that she had the notes done by an attorney,

1       okay? So she had legal counsel.

2               THE COURT: Right.

3               MR. HIPPLE: She went to Brian, had Brian sign  
4       the notes without the other creditors knowing, okay?  
5       All right. Of Brian -- of SCIX, the other creditors  
6       never knew that these notes were signed, okay? And, you  
7       know, that --

8               THE COURT: Well, at the time of the divorce,  
9       you knew about the notes? They were listed in the  
10      distribution of the property, right?

11              MR. HIPPLE: Her notes, yes.

12              THE COURT: Yes, her notes. I mean, you -- I  
13      won't -- I'm sure that I'll get this wrong, but there  
14      was a list of some property that she kept and some  
15      things that you kept, and --

16              MR. HIPPLE: Well, there are some reasons,  
17      Your Honor --

18              THE COURT: No, but -- but as far as the --  
19      there's no -- I mean, you're not -- I don't think I've  
20      heard this up till today -- you're not challenging --

21              MR. HIPPLE: No.

22              THE COURT: -- that she had these notes and  
23      there's a --

24              MR. HIPPLE: Well, there's --

25              THE COURT: -- at least with respect to SCIX,

1       they're valid debts --

2               MR. HIPPLE:   Okay.   Let me get to this next  
3       question then --

4               THE COURT:   -- of the company -- the  
5       corporation was the one that she lent the money to,  
6       right?

7               MR. HIPPLE:   Pardon me?

8               THE COURT:   She lent the money to SCIX?

9               MR. HIPPLE:   That is correct.

10              THE COURT:   So you're not disputing that -- at  
11       least, you have to admit that SCIX at one point owed  
12       this money to her?   Now, we're fighting about everything  
13       else beyond that, but that's not in dispute, right?

14              MR. HIPPLE:   Okay.   Well, the things that --  
15       that are in dispute that once she had Brian sign the  
16       note, she never proceeded with the note and that's --  
17       these are some of my questions I want to find out why.

18              MR. BERKOWITZ:   Your Honor, these are  
19       questions that you raise in State Court, challenge the  
20       validity of the confession of judgment and the  
21       legitimacy of the note.   When they came in and  
22       intervened on behalf of Clement Hipple and Complete  
23       Group in the Bucks County case, even there they didn't  
24       challenge the legitimacy of the judgments, and I don't  
25       think it's proper to challenge those here.

1 MR. HIPPLE: Well, I disagree. I'm sorry.

2 THE COURT: Well, let me ask you. In the  
3 pleadings, was there -- in the pleadings filed in this  
4 Federal case, was there any challenge to the validity of  
5 the debt -- of your client's?

6 MR. BERKOWITZ: No.

7 THE COURT: No. So I'm going to sustain the  
8 objection, Mr. Hipple. I think we're beyond that.  
9 There's issues now relating to plaintiff's allegations  
10 of fraudulent transfer, et cetera, but as far as  
11 challenging the validity of her debt, we're past that,  
12 and that wasn't challenged by your previous attorneys in  
13 this case as far as I understand it.

14 And I did read Judge DuBois' opinion and also  
15 read the pleadings and trial memos of both -- the trial  
16 memo you filed or your attorney filed and the one Mr.  
17 Berkowitz filed, and that was never raised as an issue  
18 in the case. I mean, you can tell me otherwise, I don't  
19 want you just yessing me, but --

20 MR. HIPPLE: Well, no, I'm going to go into a  
21 different area, Your Honor.

22 THE COURT: All right. Okay. Fine.

23 MR. HIPPLE: Okay. All right.

24 BY MR. HIPPLE:

25 Q Okay. We know that they're based on the lawsuit.

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1 Okay. "And, in fact, the two judgment note -- judgments  
2 and the fact that you have not been paid in full,  
3 therefore, is the sole basis for" -- I don't know this  
4 word, A-S-S-E-R-T-I-N-G --

5 MR. BERKOWITZ: Asserting.

6 BY MR. HIPPLE:

7 Q -- "asserting your claim in this case, correct?"

8 A Not correct.

9 MR. BERKOWITZ: And --

10 THE COURT: Are you -- are you reading from  
11 prepared questions?

12 MR. HIPPLE: Pardon me?

13 THE COURT: Are you reading from prepared  
14 questions?

15 MR. HIPPLE: Yes.

16 THE COURT: Do you need some help?

17 MR. HIPPLE: Yeah, sure. Yeah.

18 THE COURT: All right. Go ahead. Now, what's  
19 -- I'm sorry, Mr. Berkowitz, you objected to something  
20 here?

21 MR. BERKOWITZ: Again, I thought we were going  
22 back and raising issues that just are not germane --

23 THE COURT: All right.

24 MR. BERKOWITZ: -- to the reason we're here.

25 THE COURT: Okay. Why don't you point out

1       what questions you want to ask.

2       BY MR. HIPPLE:

3                   (Questions being read by Ms. Ann Lemmo, intern  
4       for Judge Rueter.)

5       Q     And, in fact, the two judgments and the fact that  
6       you have not been paid in full therein is the sole basis  
7       for asserting your claims in this case, right?

8                   MR. BERKOWITZ:  Objection.  Your Honor,  
9       there's a complaint that contains two counts, and that  
10      is the basis for the complaint.

11                  THE COURT:  All right.

12                  MR. BERKOWITZ:  I don't believe the witness  
13      would be capable of answering that, Your Honor.

14                  THE COURT:  Well, your -- the obligations that  
15      you're trying to get satisfied here are represented by  
16      the two notes?  There's no other obligations, right?  
17      There's no other notes out there?  No.  Okay.  Is that  
18      -- I think -- is that right?

19                  THE WITNESS:  There are just the two notes.

20                  THE COURT:  Just the two notes.

21                  THE WITNESS:  That's correct.

22                  THE COURT:  And the interest and the attorney  
23      fees, et cetera, but there's no other notes out there,  
24      any other obligations that you're asserting, is that  
25      correct?

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1 THE WITNESS: That's correct.

2 THE COURT: Right. Okay.

3 MR. HIPPLE: Okay. Next question.

4 THE COURT: Right.

5 BY MR. HIPPLE:

6 (Questions being read by Ms. Ann Lemmo, intern  
7 for Judge Rueter.)

8 Q Now, after the two judgments were entered in 2003,  
9 you did not take any action then to execute on those  
10 judgments, right?

11 A Correct.

12 Q You did not execute on either of the judgments at  
13 any point in 2004 through 2009, right?

14 A Correct.

15 Q And you did not take action at any point in time to  
16 SCIX into involuntary bankruptcy, correct?

17 A I'm not sure how to answer that question.

18 MR. HIPPLE: Explain to her about the  
19 bankruptcy.

20 THE COURT: No. She said she's -- she's not  
21 sure she can answer that --

22 MR. HIPPLE: Okay.

23 THE COURT: -- I assume because she's not a  
24 lawyer and she doesn't know the procedure, is that  
25 right?



1 THE WITNESS: That's correct.

2 BY MR. HIPPLE:

3 (Questions being read by Ms. Ann Lemmo, intern  
4 for Judge Rueter.)

5 Q And, in fact, SCIX was making payments to you on  
6 those judgments, right?

7 A Irregularly, yes.

8 Q And you accepted those payments, right?

9 A Yes.

10 (Pause in proceedings.)

11 MR. HIPPLE: May I approach, okay?

12 THE COURT: Yes.

13 MR. HIPPLE: Do you want to read the question?

14 MS. LEMMO: Sure.

15 THE COURT: Why don't -- you want to show that  
16 to Mr. Berkowitz?

17 MR. BERKOWITZ: Your Honor, I'm sorry. This  
18 is Exhibit 132. She can get it right out of the binder.

19 THE COURT: Okay. Would you go to 132, Ms.  
20 Concepcion, please.

21 THE WITNESS: Plaintiff?

22 THE COURT: Plaintiff's, yes.

23 MR. BERKOWITZ: Plaintiff's 132. That is the  
24 blow-up, Your Honor, if you want me to put it up there.

25 THE COURT: Sure. It's up there now.

1 MR. BERKOWITZ: Oh, okay.

2 THE WITNESS: If I could see it a little bit  
3 better, it would help me.

4 MR. BERKOWITZ: I wouldn't be able to see it  
5 from there either. This is page three of four.

6 THE WITNESS: Okay. I'm going to find it in  
7 the book. It's still not very clear.

8 THE COURT: All right. Go ahead, Mr. Hipple.

9 MR. HIPPLE: Okay.

10 BY MR. HIPPLE:

11 (Questions being read by Ms. Ann Lemmo, intern  
12 for Judge Rueter.)

13 Q Is that a check made payable to you for \$3,000 from  
14 SCIX?

15 THE COURT: Is there a date or --

16 MR. HIPPLE: Yes. The date is September,  
17 2010.

18 THE WITNESS: Okay. I found the exhibit.  
19 What is it you're referring to?

20 MR. HIPPLE: It's the last page of that  
21 exhibit, or no, September, 2010, the last page, \$3,000  
22 check. Under -- below it's the 53,000 garnish.

23 THE WITNESS: I see a check number listed for  
24 \$3,386.30.

25 MR. HIPPLE: No. That's not the right check.

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1 No, it's December -- I mean, not December -- September,  
2 2010.

3 THE WITNESS: September, 2010, I see a check  
4 there for 3,000.

5 MR. HIPPLE: Okay. Next.

6 BY MR. HIPPLE:

7 (Questions being read by Ms. Ann Lemmo, intern  
8 for Judge Rueter.)

9 Q Two weeks later you filed a -- I don't know how to  
10 say that word --

11 THE COURT: Praecipe.

12 BY MR. HIPPLE:

13 (Questions being read by Ms. Ann Lemmo, intern  
14 for Judge Rueter.)

15 Q -- praecipe for writ of execution, and writ of  
16 execution was issued to you to garnish the bank account  
17 for SCIX, right?

18 A That was done without my knowledge. I had -- I  
19 didn't direct that. That was done by the collectors  
20 trying to collect on my debt.

21 MR. HIPPLE: But it -- it was two weeks after,  
22 correct?

23 THE WITNESS: I have no reason to think it was  
24 two weeks or not. I don't know when -- when it was  
25 done.

1 BY MR. HIPPLE:

2 (Questions being read by Ms. Ann Lemmo, intern  
3 for Judge Rueter.)

4 Q And for months you had been meeting with SMS for the  
5 purpose of trying to locate Clement Hipple's assets,  
6 right?

7 A I did not meet with SMS for months. They took the  
8 contract and worked it.

9 MR. HIPPLE: So you -- you never met with them  
10 in reference to Clement Hipple?

11 THE WITNESS: I did not say I never met with  
12 them. I contracted with them. From there I got phone  
13 calls and updates.

14 MR. HIPPLE: And in reference to Clement  
15 Hipple?

16 THE WITNESS: Of course.

17 BY MR. HIPPLE:

18 (Questions being read by Ms. Ann Lemmo, intern  
19 for Judge Rueter.)

20 Q Already identified him as the target, right?

21 A The notes were against SCIX, LLC.

22 MR. HIPPLE: But when you met with them, you  
23 did have me as the target, correct?

24 THE WITNESS: False.

25 MR. HIPPLE: False.

1 BY MR. HIPPLE:

2 (Questions being read by Ms. Ann Lemmo, intern  
3 for Judge Rueter.)

4 Q Well, you had already planned to go after Clem  
5 Hipple's assets for the debt owed by SCIX, right?

6 A False.

7 (Pause in proceedings.)

8 Q Isn't it true that during your divorce proceedings,  
9 your divorce attorney referred to you as -- referred to  
10 you SMS, a financial recovery group in Arizona?

11 MR. BERKOWITZ: Objection. Irrelevant.

12 THE COURT: All right. I'll sustain the  
13 objection.

14 MR. HIPPLE: That mean -- that mean go or not?

15 THE COURT: No. It means --

16 MR. HIPPLE: Is it go?

17 THE COURT: No. I'm -- she doesn't have to  
18 answer that question.

19 MR. HIPPLE: Well, there's a -- there's a  
20 deposition here. I have to take her to the deposition.

21 THE COURT: Okay. Not -- not for that area of  
22 questioning, but for some other area.

23 MR. HIPPLE: Well, that's where I get  
24 confused, okay? You don't want me to go to the  
25 deposition, right, where she answered different than she

1 just did now.

2 THE COURT: What did she -- what did she  
3 answer now that you think is contrary -- what area --  
4 what subject?

5 MR. HIPPLE: Apparently they put the  
6 deposition there so let me just check it and see why.  
7 89, one.

8 MR. BERKOWITZ: Your Honor, if I might be  
9 heard while --

10 THE COURT: Sure.

11 MR. BERKOWITZ: Mr. Hipple I think was warned  
12 at the beginning that he would be at a disadvantage  
13 without an attorney, and I think you were pretty clear  
14 in your advice. And, you know, the use of the  
15 deposition, attorneys know how to use them. That's not  
16 what's happening here. There was a question, an  
17 objection that was sustained.

18 THE COURT: Well, I'm not sure that he's  
19 trying -- I'm not sure he's trying -- I hope he's not  
20 trying to get back to the same question with the  
21 deposition. He can't do that. But I don't know if  
22 there's -- he said there was something she said  
23 contradictory, so he -- I think --

24 MR. HIPPLE: Oh, well, that's what I was going  
25 to -- it had a deposition number alongside of it. So

1       what I will do, Your Honor --

2               THE COURT:   What happened, the lawyer probably  
3       -- whoever prepared those questions --

4               MR. HIPPLE:   And then the deposition alongside  
5       of it.

6               THE COURT:   -- had referred to the deposition  
7       in the event that the witness said something contrary,  
8       she could just refer to the deposition page quickly.

9               MR. HIPPLE:   Well, that's what the lawyer  
10       would do, right?

11              THE COURT:   Right.   But she -- I don't think  
12       she said anything contradictory to what --

13              MR. HIPPLE:   What was her answer to that  
14       question?

15              THE COURT:   Well, I sustained it, which means  
16       the objection, which means she doesn't have to answer  
17       it.   Because Mr. Berkowitz is right, I mean, there's  
18       been judgments entered on the notes, right?   For better  
19       or worse, there's judgments.   And now this is an action  
20       to collect on those judgments.   So what happened for the  
21       most part prior to those judgments is irrelevant.

22              Except it goes maybe perhaps to your intent of  
23       evading -- or not your intent but the corporation's --  
24       your intent.   I guess if you were paying regularly, and  
25       it shows maybe -- maybe you could argue it shows you

1 didn't have intent to evade, so we'll see.

2 MR. HIPPLE: All right. Then --

3 THE COURT: But her actions are irrelevant.

4 BY MR. HIPPLE:

5 (Questions being read by Ms. Ann Lemmo, intern  
6 for Judge Rueter.)

7 Q And you met with SMS before garnishing the SCIX bank  
8 account, right?

9 A That's correct, I did meet with SMS before the  
10 account was garnished.

11 MR. HIPPLE: Let me look at this.

12 (Pause in proceedings.)

13 MR. HIPPLE: If it's not important, I'm just  
14 going to bypass them, but I've got to read it, okay?  
15 I've got to take a minute and read it.

16 THE COURT: Okay.

17 MR. HIPPLE: If it's not important, I'm just  
18 going to bypass.

19 (Pause in proceedings.)

20 MR. HIPPLE: I guess the attorney was just  
21 trying to get different things on the record. That's  
22 what a lot of this is.

23 (Pause in proceedings.)

24 MR. HIPPLE: Maybe this one is important, Your  
25 Honor. Okay. I have to bring her attention to the



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1 deposition, 94.3 till 90 -- till 10, 94.10. I'll ask  
2 the question and --

3 MR. BERKOWITZ: I'm sorry. There's no  
4 question pending for use of the deposition.

5 MR. HIPPLE: Okay. Let me --

6 MR. BERKOWITZ: I guess that was an objection.

7 THE COURT: Why don't you just ask the  
8 question.

9 MR. HIPPLE: Okay.

10 BY MR. HIPPLE:

11 Q "Do you remember if you gave them the other  
12 documents?"

13 THE COURT: Gave who?

14 MR. HIPPLE: SMS.

15 THE COURT: What documents?

16 MR. HIPPLE: Oh, the documents were up  
17 earlier, I bypassed it. Okay. Let me go on.

18 "No, I don't remember," was her answer.

19 "Okay. You mentioned that you talked  
20 strategy. Was that the strategy?"

21 MR. BERKOWITZ: I object.

22 THE COURT: But here's the problem, again.

23 Mr. Hipple, this is all that happened pre-judgment,  
24 okay. So this -- what effort she made in trying to  
25 collect the judgment or collect on the debt pre-judgment

1 really is not relevant to this case.

2 MR. HIPPLE: Well, the answer -- the answer to  
3 this question -- the answer -- I'm going to read the  
4 answer to this question.

5 "To try to find out where Clement's assets  
6 were hiding."

7 This is the -- the direction I'm going. It  
8 has nothing to do with the notes, Your Honor. It's more  
9 about her coming after me and not going after SCIX. So  
10 it's a totally different issue. I feel that I should be  
11 at least allowed to get that in the record.

12 THE COURT: Well, why do you think it's  
13 relevant? Why do you think that is relevant to this  
14 case?

15 MR. HIPPLE: Well, because it shows that --  
16 that I was the target and not SCIX, and she had the note  
17 with SCIX. And there's a lot of stuff in here that she  
18 said during her deposition.

19 MR. BERKOWITZ: Object, Your Honor. I'm not  
20 even sure how to object to the question. But the fact  
21 of the matter is the execution was done against SCIX.  
22 That Mr. Hipple is in this suit is what happened as a  
23 result after the garnishment was in place.

24 THE COURT: Right.

25 MR. HIPPLE: Well, again, Your Honor, I --

1 again, these are -- okay, I'll ask this next question.

2 "Okay. I hear what you are saying. Do you  
3 know if he had any other interest in SCIX?" That was  
4 the question to her.

5 And her answer is, "I don't know anything  
6 about his ownership interest."

7 I'll just -- stop me, Your Honor, when you  
8 want.

9 "Okay. Do you know when he -- he would have  
10 had an ownership interest, if ever in SCIX" --

11 MS. LEMMO: "All along."

12 MR. HIPPLE: -- "all along?" Okay. So now --  
13 now, she's saying that in her mind I own SCIX all along.

14 MR. BERKOWITZ: I'm going to object, Your  
15 Honor.

16 THE COURT: Well, it doesn't really matter  
17 what's in her mind and why she thinks this. It's what  
18 she can prove here in court.

19 MR. HIPPLE: No, but she --

20 THE COURT: Now, you -- you have gone -- you  
21 have gone through lengths to show that your son, Brian  
22 Hipple, was the owner and operator of SCIX --

23 MR. HIPPLE: Yes.

24 THE COURT: -- and you -- you know, you've  
25 argued that you have had nothing to do with that

1 company.

2 MR. HIPPLE: And that's been proven basically,  
3 yes.

4 THE COURT: Right. But the fact that she may  
5 have some beliefs that you were -- that you had a  
6 control or some effort in running that company or  
7 controlling its assets, that may be her belief, but that  
8 doesn't advance your defense here at all, or -- it  
9 doesn't even advance the plaintiff's case because it's  
10 not evidence. She may believe it, but she's got to  
11 prove it.

12 MR. HIPPLE: Yeah, but it would go into the  
13 record --

14 THE COURT: Well, maybe -- I'm not saying her  
15 proof -- they're required to prove that, but that may be  
16 one point they may be trying to make.

17 MR. HIPPLE: But I can't get anything in the  
18 record of what her real intentions were.

19 THE COURT: Well, her intentions really are  
20 irrelevant, what her intention is. She's trying to  
21 collect on the note that she signed with SCIX.

22 MR. HIPPLE: Well, then, I don't understand  
23 why the attorney took the time to write this up.

24 THE COURT: Well, I'm not sure either, but --

25 MR. HIPPLE: I mean, it must have been

1 relevant as far as the attorney was concerned.

2 THE COURT: Yes, but a lot of attorneys ask  
3 questions -- you know, Mr. Berkowitz asked some  
4 questions and you --

5 MR. HIPPLE: No, no, he doesn't ask questions,  
6 does he?

7 THE COURT: Well, you objected and I sustained  
8 it. So he thought, you know, he thought these were  
9 proper questions, I didn't think they were, so lawyers  
10 always do that. And Judges don't get it right all the  
11 time either, so -- we try to do our best, but --

12 MR. HIPPLE: All right. Can I ask her a  
13 couple questions about SCIX that she stated?

14 THE COURT: Sure. She may have some  
15 knowledge. She worked for them, right, or she did some  
16 work for them, right?

17 MR. HIPPLE: Yeah.

18 THE COURT: Okay. Sure.

19 MR. HIPPLE: That's part --

20 THE COURT: All right. Go ahead.

21 MR. HIPPLE: -- that's part of it in here,  
22 okay.

23 THE COURT: Yes. Go ahead.

24 BY MR. HIPPLE:

25 Q All right. Well, this is one question. "You have

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1 no facts or support" --

2 MR. HIPPLE: Go ahead.

3 BY MR. HIPPLE:

4 (Questions being read by Ms. Ann Lemmo, intern  
5 for Judge Rueter.)

6 Q You have no facts to support the notion that Clement  
7 Hipple was controlling SCIX in September or October of  
8 2000 --

9 MR. HIPPLE: '10.

10 BY MR. HIPPLE:

11 (Questions being read by Ms. Ann Lemmo, intern  
12 for Judge Rueter.)

13 Q -- okay, 2010?

14 A I have no facts to support it.

15 MR. BERKOWITZ: Object, Your Honor. And --  
16 and this was when I asked the offer of proof, and it was  
17 dealt with on Ms. Concepcion's direct testimony, all of  
18 the investigation into the fraudulent transaction was  
19 done by me.

20 THE COURT: All right. Well, her answer  
21 stands. I understand that. Her answer stands.

22 Go ahead, Mr. Hipple.

23 BY MR. HIPPLE:

24 (Questions being read by Ms. Ann Lemmo, intern  
25 for Judge Rueter.)

1 Q Other than the patents and the customer list, you  
2 did not know if SCIX even had any assets or what those  
3 assets might be in September, 2010?

4 A I would have no way of knowing.

5 MR. HIPPLE: And that's the same question --

6 (Pause in proceedings.)

7 MR. HIPPLE: Okay. This is a question I need  
8 to ask.

9 MS. LEMMO: Okay.

10 BY MR. HIPPLE:

11 (Questions being read by Ms. Ann Lemmo, intern  
12 for Judge Rueter.)

13 Q And, in fact, you don't even know if you even have a  
14 lien on any -- on any assets of SCIX?

15 A I know what my attorney tells me. I don't -- I  
16 don't have any reason to know anything about that.

17 Q After you garnished the SCIX Wachovia bank account  
18 and discovered there was only \$53,000, you never took  
19 any steps to put SCIX into involuntary bankruptcy?

20 A That was in the hands of SMS to accomplish.

21 MR. HIPPLE: This one's just verifying  
22 something. This one.

23 BY MR. HIPPLE:

24 (Questions being read by Ms. Ann Lemmo, intern  
25 for Judge Rueter.)

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1 Q And, ultimately, you and Mr. Hipple came to an  
2 agreement as far as distribution of your -- I'm sorry --  
3 marital property rights?

4 A Yes.

5 Q And you agreed that the loan from SCIX to him would  
6 be awarded to Mr. Hipple?

7 A If that's what the divorce document says, I'd have  
8 no reason to state otherwise.

9 (Pause in proceedings.)

10 BY MR. HIPPLE:

11 Q You are aware that there was a property disbursement  
12 between you and mine and that on my side SCIX was on  
13 there?

14 A Again, if that's what the divorce documents say, I'd  
15 have no reason to dispute it.

16 Q And, in fact, throughout your marriage, Clement  
17 Hipple told you that he had made loans to SCIX, correct?

18 A Yes.

19 Q And you have no evidence to suggest that the debt  
20 owed by SCIX to Clement Hipple was not valid, right?

21 A I have no reason to think that, no.

22 MR. HIPPLE: Do you want this one? The  
23 notion? You --

24 MS. LEMMO: Okay.

25 BY MR. HIPPLE:



1 (Questions being read by Ms. Ann Lemmo, intern  
2 for Judge Rueter.)

3 Q Other than your personal feelings toward your ex-  
4 husband, Mr. Hipple, you have no facts to support the  
5 notion that the debt owed by SCIX to Clement Hipple was  
6 not valid, correct?

7 A I already answered that.

8 MR. HIPPLE: Okay. Add that in, did she --  
9 she had reason that -- okay. This one --

10 (Pause in proceedings.)

11 BY MR. HIPPLE:

12 (Questions being read by Ms. Ann Lemmo, intern  
13 for Judge Rueter.)

14 Q And would you agree that if the loans from Mr.  
15 Hipple had made to SCIX were, in fact, valid, Mr. Hipple  
16 had every right to protect his financial interest as  
17 they relate to those loans, right?

18 A As the law requires, yes.

19 MR. HIPPLE: I wish the attorney was here for  
20 this. You don't know how much we're passing over, okay?  
21 Kind of like how he beat up my expert witness.

22 That was answered, right? I'm going to need a  
23 minute with this one, okay? I can't find this document.

24 (Pause in proceedings.)

25 MR. HIPPLE: We're looking for a document,

1 Your Honor. It says first amended complaint.

2 THE COURT: Has that been marked as an  
3 exhibit, do you know? What's the first amended  
4 complaint say?

5 MR. HIPPLE: "You filed in this action on  
6 September" --

7 THE COURT: Why don't you read it.

8 BY MR. HIPPLE:

9 (Questions being read by Ms. Ann Lemmo, intern  
10 for Judge Rueter.)

11 Q I'm showing you the first amended complaint you  
12 filed in this action on September 17th, 2012, directing  
13 your attention to paragraph nine.

14 Upon information and belief, SCIX, Steel Seal  
15 Pro, Steel Seal and Complete Group are related by common  
16 ownership, officers, directors, employees and places and  
17 methods of operation and on information and belief,  
18 Brian Hipple is the president of SCIX, Steel Seal and  
19 Steel Seal Pro, and Clement Hipple is the president or  
20 managing director of Complete Group.

21 That was paragraph nine.

22 MR. HIPPLE: I can't find the document it says  
23 on that.

24 THE COURT: Well, it's of record. Do you want  
25 me to look at that? I mean, I'm going to have that. Do

1       you want --

2               MR. HIPPLE:   You have it?

3               THE COURT:   Oh, well, it's somewhere in the  
4       record here, yes.   It's filed of record.   So do you want  
5       to ask --

6               MR. HIPPLE:   It's not in my book.

7               THE COURT:   Pardon me?

8               MR. HIPPLE:   It's not in my --

9               THE COURT:   No, no, it's in -- it's filed in  
10       -- it's filed in the Clerk's Office electronically.

11              MR. BERKOWITZ:   It does sound like an accurate  
12       representation of the allegation in the complaint.

13              THE COURT:   Right.   So what's your -- do you  
14       want me to look at that or do you want to ask this  
15       witness --

16              MR. HIPPLE:   No, no.   If that -- if the  
17       writing says what it says, then that's fine, right?

18              THE COURT:   Yes.   I mean --

19              MR. HIPPLE:   Okay.   I believe what's happening  
20       here, Your Honor, is that my attorney wants to get  
21       certain things into the record.   I am assuming that's  
22       what's taking place here, right?

23              THE COURT:   Right.   That's his job.

24              MR. HIPPLE:   Her job.

25              THE COURT:   Oh, your job.   I'm sorry.   Yes.

1 MR. HIPPLE: Okay. We're just going to --  
2 this is just a statement, okay?

3 MR. BERKOWITZ: I'm going to object to a  
4 statement.

5 MR. HIPPLE: It's not a statement.

6 MR. BERKOWITZ: It's got to be a question.

7 MR. HIPPLE: It's a question, it's a question.  
8 It has -- it has a thing to it. Let me read this first.  
9 Hold on. Then I'll tell you where we'll go from there.

10 (Pause in proceedings.)

11 MR. HIPPLE: I know what her answer's going to  
12 be. It says -- her answer is going to be that her  
13 attorney advised her, so -- I'll read the question.

14 THE COURT: Go ahead.

15 BY MR. HIPPLE:

16 (Questions being read by Ms. Ann Lemmo, intern  
17 for Judge Rueter.)

18 Q We now are in February, 2015. Isn't it true that --  
19 isn't it true that sitting here today you still have no  
20 actual facts to substantiate your allegation that SCIX,  
21 Steel Seal Pro, Steel Seal, LLC, and Complete Group are  
22 the same or somehow related, right?

23 A Repeat that, please.

24 Q We now are in February, 2015. Isn't it true that  
25 sitting here today you still have no actual facts to

1       substantiate your allegation that SCIX, Steel Seal Pro,  
2       Steel Seal, LLC, and Complete Group are the same or  
3       somehow related, right?

4       A     That's correct.

5                 MR. HIPPLE:  We can read it but we can't -- we  
6       can't direct her attention.

7       BY MR. HIPPLE:

8                 (Questions being read by Ms. Ann Lemmo, intern  
9       for Judge Rueter.)

10       Q     Directing your attention to paragraph 37 of the  
11       first amended complaint, it states, "Upon information  
12       and belief Brian Hipple and Clement Hipple are the  
13       officers and directors of the corporate defendants and  
14       alone or together, with each other and perhaps others  
15       unknown to the plaintiff, caused SCIX to become  
16       insolvent by fraudulently transferring assets of SCIX to  
17       themselves, the other defendants and perhaps others  
18       without adequate consideration, thereby rendering SCIX  
19       unable to satisfy Teresa Hipple's judgments against  
20       SCIX.

21       A     What's the question?

22                 THE COURT:  Is that -- was that in the  
23       complaint?

24                 MR. HIPPLE:  What's that?  Yeah.

25                 THE COURT:  That was in the amended complaint?

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1 Do you have any reason to --

2 MR. HIPPLE: You don't have to answer it,  
3 right?

4 THE COURT: -- disagree with that? That was  
5 in your complaint?

6 THE WITNESS: No, I have no reason to disagree  
7 with something that's in my complaint.

8 BY MR. HIPPLE:

9 (Questions being read by Ms. Ann Lemmo, intern  
10 for Judge Rueter.)

11 Q You don't know who owned SCIX in September or  
12 October --

13 MR. HIPPLE: 2010.

14 BY MR. HIPPLE:

15 (Questions being read by Ms. Ann Lemmo, intern  
16 for Judge Rueter.)

17 Q -- 2010?

18 A No.

19 Q You have no facts to support the notion that Clement  
20 Hipple was controlling SCIX in September or October of  
21 2010?

22 A I have no facts.

23 Q And, in fact, you have no idea of the goings on at  
24 SCIX since you left there in August, 2000, right?

25 A What I knew of SCIX after my termination, I learned

1 by virtue of Clement Hipple.

2 Q You don't know who owns or owned Steel Seal Pro?

3 A No, I do not.

4 Q Also true that you have no knowledge of the identity  
5 of the officers and directors of Steel Seal Pro at any  
6 point in time?

7 A That's correct.

8 Q You don't have any facts to support the notion that  
9 Clement Hipple controlled Steel Seal Pro?

10 A That's correct.

11 Q In this action, you allege that assets were  
12 fraudulently transferred by SCIX to one or more of the  
13 -- other defendants, right?

14 A I did not allege that. My attorney did.

15 Q When, in fact, you don't even know what assets were  
16 allegedly transferred?

17 A Again, all work on my -- on behalf of my attorney.

18 Q And, in fact, you don't have personal knowledge that  
19 Clement Hipple ever actually received any assets of  
20 SCIX?

21 A Given.

22 Q And you don't know if Clem Hipple ever took any  
23 assets of SCIX, right?

24 A I have no personal knowledge of that.

25 Q And you don't know if Complete Group ever received

1 any assets of SCIX?

2 A Again, I have no knowledge of any of that  
3 personally.

4 Q You don't know if Steel Seal Pro ever received any  
5 assets or proceeds of assets of SCIX?

6 A That's correct.

7 Q You don't know if Steel Seal, LLC, ever received any  
8 assets of SCIX or proceeds of any assets of SCIX?

9 MR. BERKOWITZ: Objection. Your Honor, if I  
10 could -- I believe Ms. Concepcion may be a little  
11 confused.

12 I had instructed her on the attorney-client  
13 privilege. All the information and facts that she has  
14 are the result of attorney-client communications, and  
15 she's trying to preserve her right to her attorney-  
16 client privilege. So when she says she has no facts,  
17 she has information -- she may have information, it  
18 comes from me, it all comes from me.

19 THE WITNESS: That's correct.

20 THE COURT: So you don't -- when you say you  
21 don't have any facts, you mean facts independent of  
22 whatever Mr. Berkowitz told you?

23 THE WITNESS: That's correct, sir.

24 THE COURT: All right. So what she's saying,  
25 if I understand what she's saying, is that the only --



1 all the information she has received regarding the  
2 companies and who controls them, et cetera, is through  
3 the attorney.

4 MR. HIPPLE: Right. But she's the one that  
5 brought the lawsuit, Your Honor.

6 THE COURT: Right.

7 MR. HIPPLE: She should have some knowledge of  
8 what -- what she's suing for or why she's suing.

9 THE COURT: Well, she's -- she's saying she  
10 doesn't have independent knowledge other than what the  
11 attorney told her.

12 MR. HIPPLE: So what does that mean to us on  
13 this side?

14 THE COURT: It means what I just said it  
15 means.

16 MR. HIPPLE: You haven't -- she didn't have no  
17 knowledge of anything then basically.

18 THE COURT: Other than what her attorney told  
19 her.

20 MR. HIPPLE: So every question would be the  
21 same -- answer would be the same?

22 THE COURT: I don't know that, but I -- you  
23 can ask -- I don't know what your questions are.

24 MR. HIPPLE: Well, that -- well, that part was  
25 all about that knowledge of the loan. Okay. We're

1 going to go into a different area now.

2 THE COURT: So we have -- we have like three  
3 minutes before I'm going to end today, okay? I'm not  
4 saying you have to finish Ms. Concepcion today, but I'm  
5 just saying --

6 MR. HIPPLE: Oh, it's not going to happen,  
7 it's never going to happen.

8 THE COURT: No. You can continue tomorrow.

9 MR. HIPPLE: Yeah, why don't we just continue  
10 tomorrow.

11 THE COURT: All right. So after you finish  
12 with Ms. Concepcion, what -- who else -- you're going to  
13 call yourself.

14 MR. HIPPLE: Myself.

15 THE COURT: And then you'll be finished?

16 MR. HIPPLE: Right. And then I'll do -- I'll  
17 try and get through myself tomorrow --

18 THE COURT: Okay.

19 MR. HIPPLE: -- after I'm done with Ms.  
20 Concepcion. And from what I understand, I have to  
21 prepare a closing statement, correct?

22 THE COURT: Right. But we can -- we can talk  
23 about -- we can do that another day. I'm okay. I want  
24 an agreement among both of you, but if we finish the  
25 testimony tomorrow and you need time to do a closing

1 statement, we can come back another day. I know you  
2 live overseas. But, you know, we would have to see what  
3 everybody's schedule is.

4 I mean, I could do it next week. I know  
5 people are on vacation, but I can fit people in next  
6 week. But if we can work out a date, I've done that  
7 before. I've done cases where they're non-jury, people  
8 who have ordered the transcript, you know, then they  
9 submit some submission and they come back two, three  
10 weeks later, a month later, and they have closing  
11 arguments. So we can work all that out.

12 MR. HIPPLE: All right. That would probably  
13 work.

14 THE COURT: The bottom line is, I want to tell  
15 you, I'm not -- believe me, I'd like to get this over  
16 with, but I'm not rushing you, okay? I want to give you  
17 an opportunity to be heard, okay? So, you know, don't  
18 -- don't feel that I'm rushing you or don't --

19 MR. HIPPLE: Yeah, because that's how --

20 THE COURT: -- I don't want you ever claiming  
21 that I --

22 MR. HIPPLE: I always feel that way here.

23 THE COURT: Well --

24 MR. HIPPLE: I'm sorry, but I know -- I know  
25 it --

1 THE COURT: But if you were an attorney, I  
2 would -- you would feel the same way, because we're all  
3 trying to get through this.

4 MR. BERKOWITZ: Your Honor, I --

5 THE COURT: I'm sure Mr. Berkowitz feels that  
6 way, too.

7 MR. HIPPLE: Yeah, but he draws pictures of  
8 houses, Your Honor.

9 THE COURT: Right. I know.

10 MR. BERKOWITZ: Not very well.

11 THE COURT: Right.

12 MR. BERKOWITZ: Your Honor, I do have my  
13 vacation coming up, and Mr. Klein has a fraudulent  
14 conveyance trial coming up, and I'm going to be  
15 assisting him.

16 THE COURT: When is your -- when do you come  
17 back from vacation? You're leaving Saturday?

18 MR. BERKOWITZ: I'm leaving Saturday. Two  
19 weeks, I hope I have -- although I've got to go to  
20 Superior Court in the middle of the second week in  
21 Harrisburg, so I'm trying to get as much vacation in as  
22 I can. And then Mr. Klein has a trial on the Chester  
23 County trial list that I'm going to back him up on.

24 THE COURT: Okay.

25 MR. BERKOWITZ: So I don't know exactly what

1 the schedule is for the rest of the month.

2 THE COURT: All right. Let -- what I would  
3 suggest, let's see where we are tomorrow, how much we  
4 get done tomorrow, okay? And if you're finished  
5 tomorrow, then we can pick a time to do closing  
6 arguments. We can -- you can even do them by writing if  
7 you want. We can -- I'm flexible.

8 MR. HIPPLE: In other words, we can just send  
9 them in to you?

10 THE COURT: You can send them in.

11 MR. HIPPLE: Would that be all right with you?

12 MR. BERKOWITZ: I have no -- I would prefer to  
13 do my closing in person.

14 THE COURT: Right. We could do it by -- if  
15 you're -- we could do it by Skype. If you -- you know,  
16 if you feel like you're --

17 MR. HIPPLE: I don't think I -- I do have  
18 Skype by the way, because naturally where --

19 THE COURT: Right.

20 MR. HIPPLE: -- I live in South America.

21 THE COURT: Well, I know that, but if you  
22 wanted to -- if you consented to this and we can have it  
23 here live in court and you could participate by Skype or  
24 video-conferencing. We have some video-conferencing.  
25 You would have to --

1 MR. HIPPLE: I think I would rather send it.

2 MR. BERKOWITZ: You mean, by --

3 MR. HIPPLE: No.

4 MR. BERKOWITZ: Your Honor, the only objection  
5 I would have is it should not be done by an attorney for  
6 Mr. Hipple. The Third Circuit and the District Courts  
7 have limitations, strong limitations against ghost  
8 writing and things like that, and --

9 THE COURT: Right.

10 MR. BERKOWITZ: -- I don't think it would be  
11 appropriate for an attorney to prepare a closing summary  
12 for Mr. Hipple.

13 MR. HIPPLE: There's not many attorneys in  
14 Colombia that speak English, Your Honor.

15 THE COURT: All right. Well, let's -- we'll  
16 talk about this tomorrow, okay? I'll see you -- see you  
17 tomorrow at 9:00.

18 MR. BERKOWITZ: Thank you, Your Honor.

19 THE COURT: Okay.

20 MR. HIPPLE: All right. Thank you, Your  
21 Honor.

22 (Proceedings concluded at 4:30 p.m.)

23 \* \* \*

24

25

I N D E XDEFENDANTS' WITNESSESDIRECT CROSS REDIRECT RECROSS

Ira Krassan

By Mr. Hipple

12

35

By Mr. Berkowitz

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William Pederson

By Mr. Hipple

48

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By Mr. Berkowitz

129

260

Teresa Concepcion

By Mr. Hipple

278

\* \* \*

PLAINTIFF'S EXHIBITSADMITTED INTO EVIDENCE

P-125 Wachovia Bank checks - business  
expenses

8

\* \* \*

CERTIFICATION

I, Donna Anders, do hereby certify that the foregoing is a true and correct transcript from the electronic sound recordings of the proceedings in the above-captioned matter.

10/4/15  
Date

Donna Anders  
Donna Anders